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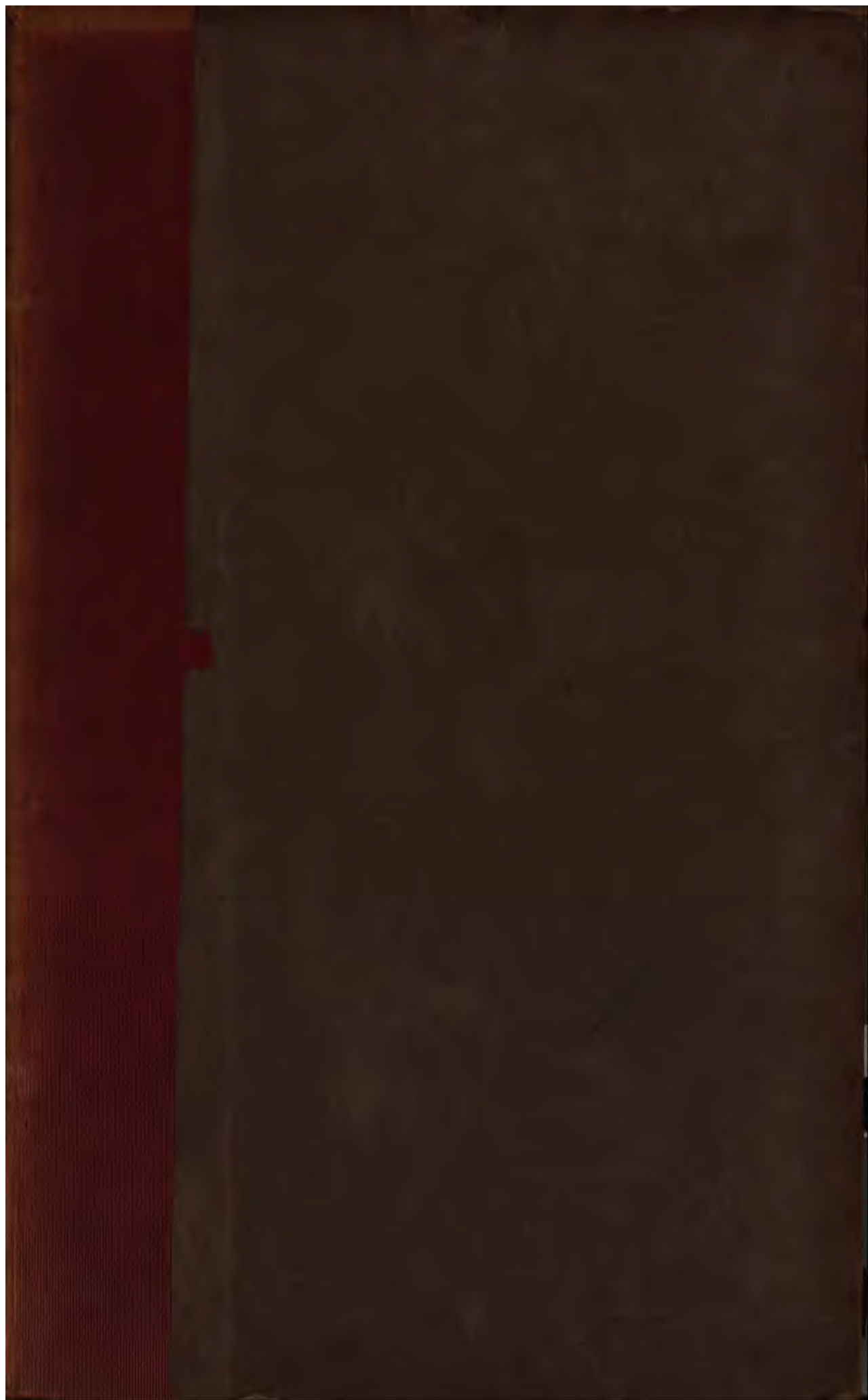
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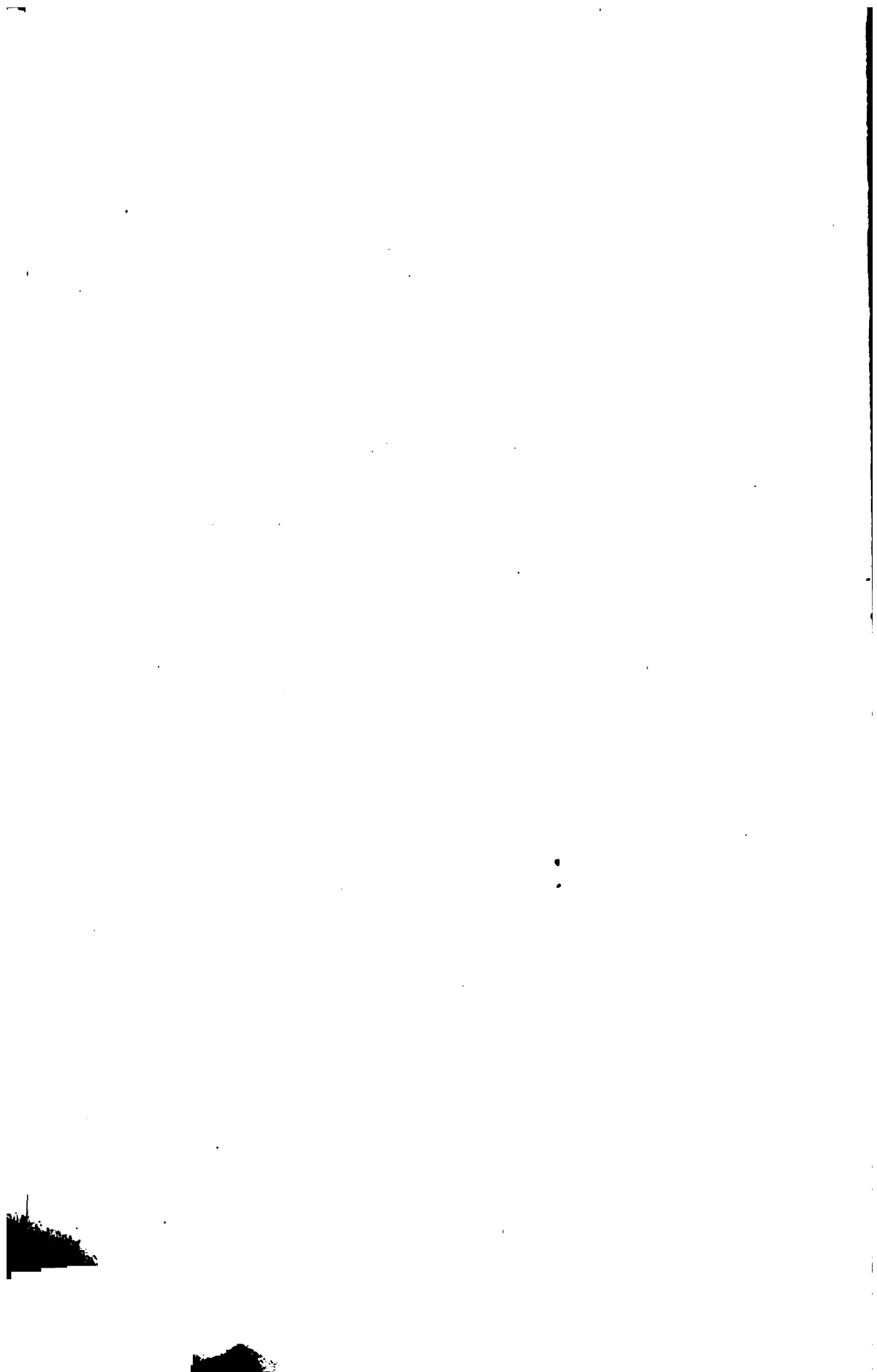
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A N A L Y S I S
OF
SERVICE OF HEIRS, TRANSFERENCE OF LANDS,
BURGAGE TENURE, HERITABLE SECURITIES,
AND CROWN CHARTERS ACTS, 1847.

WITH AN
APPENDIX,
CONTAINING THE ACTS AND PRACTICAL FORMS OF THE WRITS AND
INSTRUMENTS THEREBY INTRODUCED.

BY
WILLIAM ALEXANDER, W.S.;
AUTHOR OF ABRIDGMENTS OF THE ACTS OF THE PARLIAMENTS OF SCOTLAND, AND OF THE
ACTS OF SEDERUNT OF THE LORDS OF COUNCIL AND SESSION; A DIGEST OF
THE BANKRUPT ACT FOR SCOTLAND; AN ANALYSIS OF THE
HERITABLE SECURITIES AND INFECTMENT ACTS, &c.

EDINBURGH :
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TO THE
RIGHT HONOURABLE ANDREW RUTHERFURD,
LORD ADVOCATE OF SCOTLAND.

MY LORD,

I respectfully beg leave to inscribe the present Publication to your Lordship, in the hope that it may be considered an Auxiliary to the Practical Working of the important Statutes analysed, containing most beneficial Reforms on the Law of Scotland, for which the Public have to thank your official and Parliamentary exertions.

I have the honour to be,

MY LORD,

Your Lordship's obedient faithful humble Servant,

W. ALEXANDER.

EDINBURGH, 7th August 1847.



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ANALYSIS

OF

SERVICE OF HEIRS ACT.

CHAPTER I.

PRELIMINARY.

THE general objects of the present Statute are the following:—

1. To abolish the ancient practice of issuing Brieves <sup>General ob-
jects.</sup> from Chancery for the Service of Heirs, and the procedure that has been consequent thereon before the Court of Session, Sheriffs, and Magistrates of Burghs, including the trial of the inquiries or heads of the Brieve by a Jury.

2. The appointment of a new Judge to be called the Sheriff of Chancery, with an exclusive primary Jurisdiction in all Applications for the General Service of Heirs where the ancestor had no domicile within Scotland at the time of his death, and in all applications for Special Service where the lands are situated in different Counties in Scotland; and, in the option of the Petitioner, with a cumulative primary jurisdiction with Sheriffs of Counties in other cases.

3. To authorise the Sheriff of the County within which the deceased had his ordinary or principal domicile at the time of his death, or the Sheriff of Chancery, to judge in Applications for a General Service to him.

General
Objects.

4. To authorise the Sheriff of the County within whose jurisdiction the lands or other heritages are situated, or the Sheriff of Chancery, to determine Claims for the Special Service of an Heir in such lands.

5. To simplify the Forms by which Claims of Service may be made and disposed of, and brought under review of the Supreme Court.

6. To establish a mode for Persons serving themselves Heirs in General or Special, without incurring more than a limited representation to their Ancestors, without complying with the cumbrous provisions of the Act 1695, cap. 24, allowing Services *cum beneficio inventarii*.

Heirs may still be entered by Precept of *Clare constat*, or by Service *More burgi*. § 26.

CHAPTER II.

FORM AND CONTENTS OF THE PETITION FOR SERVICE.

Form of
Petition.

The Petition, which must be subscribed by the Petitioner, or by a Mandatary specially authorised for the purpose, must be in the form, or as nearly so as the case will admit, of one or other of the Schedules A. and B. annexed to the Act.

General
Service.

In case of a Claim for a General Service as Heir of Line, the Petition simply sets forth the death of the Ancestor, and the date at or about which the same took place, where he had then his principal or ordinary domicile, and the relationship of the Petitioner, concluding with a Prayer to serve him Heir in general to his Ancestor.

Where the party claims to be served as Heir of Provision, the Petition will be varied accordingly, and the Deed of Provision distinctly specified.

The Petition for a Special Service must not only specify ^{Special Service.} the death of the ancestor, and when the same took place, but describe the lands with reference to which the Service is sought, and specify the Warrant and Instrument of Sasine, whereby the ancestor was last vest and seised in the lands. The relationship or character in which the Petitioner claims to be served has also to be represented, and in the case of an Heir of Tailie or Provision, the Deed of Entail or of Provision distinctly specified. § 4.

In all cases of Special Service, where the lands are held ^{Where Lands held under Entail.} under a Deed of Entail, it is lawful and competent to omit the full insertion of the Conditions and Provisions of the Deed of Entail in the Petition of Service and Decree thereon, and in the Precepts, Sasines, or other Instruments necessary to complete the Investiture of the heir, provided such conditions and provisions be therein specially and directly referred to, as set forth at full length in the recorded Instrument of Sasine in favour of the deceased person served to, or as set forth at full length in the Deed of Entail itself, if the same shall have been recorded in the Register of Taillies, or as set forth at full length in any recorded Instrument of Sasine forming a part of the Title-Deeds of the Lands held under such Deed of Entail. Such reference must be made in the form, or as nearly as may be in the form shewn in Schedule B. annexed to the Act. § 5.

In like manner, in all cases of Special Service, where the ^{Where Lands held under real Burdens.} lands are held under any real burdens or conditions, or limitations appointed to be fully inserted in the Investitures of such lands, it is declared lawful and competent in the Petition of Service, and in the Decree of Service, and in the Precepts, Sasines, or other Instruments necessary to complete the Investiture which may follow on such Decree, to omit the full insertion of such real burdens or conditions or limitations, provided they shall be therein specially and

directly referred to, as set forth at full length in the recorded Instrument of Sasine in favour of the deceased person served to, or as set forth at full length in the recorded Instrument of Sasine, or of Resignation *ad remanentiam* of the lands in which the same were first inserted, or in any other intermediate recorded Instrument of Sasine. Such reference must be made in the form, or as nearly as may be in the form, shewn in Schedule B. annexed to the Act. § 6.

General Service may be combined with Special Service.

It is competent for the Petitioner in any application for Special Service, as heir of line or heir male, to pray for General Service in the same character, and Decree may be pronounced accordingly. No farther notice or publication of the Petition for Service is in such case necessary than is required for the Petition of Special Service. § 24.

CHAPTER III.

PUBLICATION OF PETITION FOR SERVICE.

Publication of Petition.

The Petition, whether presented to the Sheriff of Chancery, or to the Sheriff of a County, must be published edictally at the office of the Keeper of Edictal Citations in the General Register Office, in the same mode and form as in Edictal Citations; and in the case of a General Service, in the County of the Domicile of the deceased person; and in the case of a Special Service in the County or Counties where the lands are situated, by affixing on the doors of the Court House, or in some conspicuous place of the Court, or of the Office of the Sheriff-Clerk, as the Sheriff may direct, a short Abstract of the Petition. § 7.

Form.

The form of such Abstract, and the mode or form of the official notice of such publications, is fixed by Act of Sede-

runt, 14th July 1847, " To regulate Publication in Services," &c., which will be found in the Appendix.

Where the deceased died abroad, and a General Service ^{Where} only is claimed, an Edictal Publication alone appears neces- ^{deceased} sary. ^{died abroad.}

CHAPTER IV.

PROCEDURE IN APPLICATION FOR SERVICE.

Where the deceased died abroad, or where publication is ^{How long} made in Orkney or Shetland, no evidence in support of the ^{Petition} Petition can be led, nor Decree pronounced either by the ^{must be} Sheriff of Chancery or the Sheriff of a County, till after the ^{published} lapse of thirty days from the date of the only or latest pub- ^{before} lication. In other cases the evidence may be led on the ^{Sheriff pro-} expiration of fifteen days from the date of such publication. ^{ceeds.}

The Sheriff to whom the Petition for Service is presented, may thereafter, by himself, or by the Provost or any of the Bailies of any City or Royal Burgh (whom the Statute au- ^{Proof to be} thorises to act as Commissioner of such Sheriff without ^{led by} special appointment), or by any Commissioner whom such ^{Sheriff him-} Sheriff may appoint, proceed to receive all such evidence, ^{self or Com-} documentary and parole, as according to the law and prac- ^{missioner.} tice heretofore existing might competently be laid before the Jury summoned under the Brieve of Inquest.

Any parole evidence so received must be taken down in ^{Parole proof,} writing, according to the existing practice in the Sheriff- ^{how to be} Courts of Scotland, and a full and complete inventory of ^{taken.} the documents produced must be made out and certified by the Sheriff or his Commissioner.

On considering the evidence the Sheriff will, without the ^{Judgment} aid of a Jury, pronounce judgment, serving the Petitioner ^{by Sheriff.}

in terms of the Petition, in whole or in part, or refusing to serve the Petitioner, and dismissing the Petition, in whole or in part. § 10.

Transmis-
sion of Pro-
ceedings by
Sheriff to
Chancery.

After Decree of Service has been pronounced, the Sheriff-Clerk must, on application of the party served, transmit to the office of Director of Chancery, the Petition and other parts or steps of process, excepting any original documents or extracts of recorded writs produced, which, after judgment, fall to be returned on demand to the party producing the same.

Decree to be
recorded by
Director of
Chancery.

On the proceedings being so transmitted to Chancery, the Decree of Service must be recorded by the Director of Chancery or his Depute, in the manner and form to be directed or approved of from time to time by the Lord Clerk-Register.

Extract of
Decree
to be trans-
mitted to
Sheriff.

On Decree of Service being so recorded, the Director of Chancery, or his Depute, must prepare an authenticated Extract thereof, and transmit the same without delay, and without charge or expense against the party in respect of the transmission and retransmission, to the Sheriff-Clerk of the County, to be by him delivered to the party or his agent in the Sheriff-Court. No provision is made for the retransmission by the Director of Chancery to the Sheriff of Chancery.

Proceedings
patent.

The proceedings and judgment in the Service are directed to be at all times, both prior and subsequent to the transmission, open and patent to inspection in the office of the Sheriff-Clerk and of the Director of Chancery respectively, and certified copies must be given to any party demanding the same. § 12.

CHAPTER V.

EFFECT OF PRESENTING PETITION, JUDGMENT, AND
EXTRACT.

The Statute enacts, § 9, That a Petition of Service pre-Petition, sent to the Sheriff of Chancery, or to the Sheriff of the when published, to be County, shall, "after expiration of the period hereinafter equivalent to mentioned," be equivalent to, and have the full legal effect of a Claim. of a Brieve of Service duly executed, and of a Claim duly presented to the Inquest, according to the law and practice heretofore existing. The period referred to is supposed to be the date at which the Sheriff, to whom the Petition is presented, may lead evidence and give judgment, as explained in the preceding Chapter.

Every Petition of Service, without further publication Limitation of ground of than has been already mentioned (Chapter III.), and as may Reduction. be directed by Act of Sederunt, is held as duly published to all parties interested; and the Decree to follow upon such Petition is declared not to be questionable or reducible, upon the ground of omission or inaccuracy, in the observance, by any officer or official person, of any of the forms or proceedings prescribed by the Statute, or which shall be prescribed by Act of Sederunt. § 9.

The judgment on the Petition of Service is declared Decree of Service equivalent to the verdict of the Jury under the Brieve of equivalent to verdict of Jury. Inquest, according to the law and practice heretofore existing. § 10.

The recorded and extracted Decree of Service is declared to have the full legal effect of a Service duly re-Extracted Decree equivalent to toured to Chancery, and to be equivalent to the Retour of Retour. a Service under the Brieve of Inquest, according to the law and practice heretofore existing; and the extract of such Decree, or any second or later extract thereof, under the

hand of the proper officer entitled to make such extracts for the time, is declared equivalent to, and to have the full legal effect of, the certified extract of the retour now in use.

Challenge
must be by
Reduction.

The Decree of Service, so recorded and extracted, is not liable to challenge, and cannot be set aside, except by a Process of Reduction to be brought before the Court of Session, as heretofore in use with regard to Services duly retoured to Chancery. § 13.

Decree of
Special Ser-
vice to ope-
rate as a Dis-
position con-
taining Pre-
cept of Sa-
sine.

The Statute has introduced a farther amendment and simplification of the Law of Scotland, by enacting, that for the purpose of completing the feudal title of the person served Heir in special, but of such Heir only, every Decree of Special Service shall contain a Precept of Sasine; and such Decree, being recorded and extracted as aforesaid, shall, to all intents and purposes, unless and until reduced, be held equivalent to and have the full legal operation and effect of a Disposition in ordinary form, granted by the party deceased being last infeft of the Lands contained in such Service to and in favour of the Heir so served, and to his other Heirs and Successors entitled to succeed under the destination of the Lands contained in the Deceased's Investiture thereof, but under the whole conditions and qualifications of such Investiture, as set forth or referred to in such extracted Decree of Special Service, containing obligation to infeft by two several Infeftments and Manners of Holding, one thereof to be holden of the Deceased and his Heirs in Free-Blench for payment of a Penny Scots in name of Blench-Farm at Whitsunday yearly, upon the ground of the said Lands, if asked only, and freeing and relieving the Deceased and his Heirs of all Feu-Duties and Services exigible out of the said Lands by their immediate lawful Superiors thereof, and the other of the said Infeftments to be holden from the Deceased and his Heirs, of and under their immediate lawful Superiors in the same

manner that the Deceased, his Predecessors and Authors, held or might have holden the same, and that by Confirmation, with Assignation to the whole Writs and Rents of the Lands, and Precept of Sasine for infefting the Party served and his Successors in the Lands, all in common form; and that in order that such Sasine may be so taken by, and the Feudal Title be completed in, the person of the Heir so serving, it shall be lawful and competent for him to use such Decree of Special Service in the same manner and to the same effect as if such Decree were actually a Disposition of the nature above mentioned; and, in particular, that he shall be entitled to obtain Infeftment in the said Lands in virtue of the Precept of Sasine in such Decree of Special Service, any Notary-Public to whom such extracted Decree may be presented being authorised to give Infeftment in virtue thereof accordingly, which Infeftment may be in the form given in the Schedule (C.) annexed to the ^{Form of Infeftment} Act, and shall, with such Decree of Special Service, form ^{thereon.} as effectual an Investiture in the said Lands, holding Base of the Deceased and his Heirs, until Confirmation thereof shall be granted by the Deceased's Superior or his Successors, as if such Investiture had been created by a Disposition from the deceased as aforesaid, with an Infeftment passed on the Precept of Sasine therein contained; but such Service shall not be transmissible for the purpose of infefting, in manner and to the effect aforesaid, the Heir or Assignee of the Person so served: Provided always, that such Decree and Sasine, notwithstanding of any prohibition against ^{Where subinfeudation} subinfeudation or alternative holding contained in the Char-^{prohibited.}ter or Contract, or other Deed by which the Vassal's right is constituted, shall form a valid feudal Investiture in favour of such Heir, without prejudice to the right of the Superior, to require such Heir to enter forthwith, as accords of law, and to deal otherwise with such Heir as a Vassal unentered.

§ 21.

The incapacity of Deceased no hindrance.

The Decree of Special Service has the full effect and operation above mentioned, although the deceased had died in nonage, or been of insane mind, or laboured under any other disability whatever, and as if a disposition in the terms aforesaid had been granted by the Party deceased when of full age and capacity to grant it. § 22.

CHAPTER VI.

LIMITATION OF REPRESENTATION OF ANCESTOR BY HEIR.

Former Services *cum beneficio inventarii*.

By the common law of Scotland, an Heir of Line who has served himself as such, either in General or Special, to an Ancestor, incurred an universal representation, and became liable to the whole of his predecessor's debts, though exceeding the value of the property acquired by the Heir; but by the Act 1695, cap. 24, such Heirs, by giving up an Inventory of the Heritable Estate which belonged to their Ancestor, and going through other forms prescribed by the Statute, might obtain themselves served Heirs *cum beneficio inventarii*, and thus become liable only to the extent of the value of the subjects given up in the Inventory.

To enable Heirs, either in General or in Special, to attain the same object by a less circuitous and expensive method, in the case of a party serving Heir in General, and to constitute a Special Service, a limitation of the heir's responsibility *per se*, the New Statute has made the following enactments:—

A Special Service not to infer a General Representation.

1. That no Decree of Special Service shall be held as equivalent to or as implying a General Service to the deceased in the same character, except as to the particular lands and other heritages thereby embraced; and that every such Decree of Special Service shall infer only a limited passive representation of the deceased, and that the person

thereby served as heir shall be liable for the deceased's debts and deeds only to the extent or value of the lands and other heritages embraced by such Special Service, and no farther.

§ 23.

2. That it shall be lawful for any person presenting a Petition for General Service to a deceased person, to state in such Petition, in the form, or as nearly as the case will admit, pointed out in Schedule (D.) annexed to the Act, that he desires the effect thereof to be limited to certain lands or other heritages which belonged to the deceased, and which shall be embraced in a particular Specification thereof, to be annexed to such Petition for General Service, which Specification shall be in the form, or as nearly as may be in the form, given in the said Schedule (D.), and shall be subscribed by the Petitioner or his Mandatary; and that, in preparing an Abstract of such Petition for insertion in the Minute-Book of the Court in which it shall be presented, and for publication, it shall be described as a Petition for General Service, with Specification annexed; and that the Sheriff to whom such Petition for General Service, with a Specification annexed, shall be presented, in pronouncing Decree of Service on such Petition, shall make reference to the Specification annexed thereto; and shall limit such Decree of Service to the lands and other heritages described in the said Specification, and the effect of such Decree shall accordingly be taken and held in law as so limited; and that a copy of such Specification shall be embodied in the extract of the said Decree, and shall be signed by the Sheriff-Clerk, and recorded as part thereof; and that every such Decree of General Service, with Specification annexed, shall infer only a limited passive representation of the deceased, and the person thereby served as heir shall be liable for the deceased's debts and deeds only to the extent or value of the lands or other heritages contained in the relative Specification. § 25.

A General Service may be applied for and obtained to a limited effect by annexing a Specification.

And it shall infer only a limited Passive Representation.

**Specification
in Extracts.** To obviate doubts in regard to the form of extracts of Decrees of General Service limited to certain lands and heritages, embraced in a particular Specification annexed to the Petition of Service, it is declared by A. S., 14th July 1847, § 6, that such Specification shall be signed by the Sheriff-Clerk, but that it shall not be necessary that the copy thereof to be embodied in such extracts shall be so signed.

CHAPTER VII.

COMPETITION FOR SERVICE.

Caveat. Any party desirous of having notice of the presentment of a Petition for Service, may lodge a Caveat with the Sheriff-Clerk.

On receipt of the Petition for Service referred to in the Caveat, or of any official notice of any such Petition, which may be communicated to such Sheriff-Clerk, he is bound, within twenty-four hours thereafter, to write and put into the Post-Office a notice of such Petition, addressed either to the agent by whom, or to the person on whose behalf the Caveat is entered, according to the name and address which shall be stated in such Caveat. § 8.

The A. S. of 14th July 1847, to regulate Publication in Services, &c., having fixed the fee to the Sheriff-Clerk at 2s. 6d. "for each Caveat (to be effectual for one year)," it may be inferred that a Caveat will require renewal annually.

As the Sheriff-Clerk of Chancery must receive notice of all Petitions of Service, either by the Petition being presented to the Sheriff in Chancery, or by having charge of the Edictal Citations, a Caveat lodged with him would be

sufficient to insure notice of the presentment of any Petition of Service.

No person is entitled to appear and oppose a Service proceeding before the Sheriff in terms of this Act, who could not competently appear and oppose such Service proceeding under the Brieve of Inquest, according to the law and practice heretofore existing. ^{Who may oppose a Service.}

All objections must be presented in writing, and forthwith disposed of in a summary manner by the Sheriff; but without prejudice to him, if he see cause, allowing parties to be heard *viva voce* thereon. § 16. ^{Case summary.}

Any person who conceives that he has a preferable right to the person petitioning for Service, may present a Counter-Petition. The Sheriff, if he shall see cause, may ^{Counter Petition may be presented,} sist procedure on the first Petition in the mean time, and ^{and conjoined,} conjoin the Petitions, and thereafter proceed to take evidence, allowing to each of the parties not only a proof in chief with reference to his own claim, but a conjunct probation with reference to the claim of such other parties; and ^{and proof allowed to both parties.} the Sheriff will, after receiving the evidence, pronounce judgment on the said Petitions, serving, or refusing to serve, as may be just, and will at the same time dispose of the matter of expenses. § 11. ^{Expenses.}

In all cases in which there are competing Petitions conjoined, or in which any person has competently appeared to oppose any Petition of Service presented to the Sheriff, it shall be competent to such of the parties as shall conceive the case proper to be disposed of by a Jury Trial, at any time before the proof is begun to be taken by the Sheriff, to present a Note of Advocation to the Court of Session, praying the Court to advocate the proceedings, in order that the case may be tried by a Jury; which Note of Advocation must be proceeded with in like manner, with Notes of Advocation presented with a view to Jury Trial against ^{Application for Service may be advocated for Jury Trial before proof taken before Sheriff.} ^{Procedure.}

judgments of the Sheriff-Courts of Scotland, according to the existing practice, and judgment pronounced.

Trial. In the event of it appearing proper that the case should be tried by a Jury, the Lord President of either of the two Divisions of the Court, or such other of the Lords of Session as the Court may appoint, or as may be arranged by the Lord President of the Division, will be the Judge at the trial, and preside thereat, in like manner as is done according to the existing practice in trials by Jury, and the Jury must be chosen and summoned in like manner as on such trials.

Effect of Verdict. The verdict to be returned by the Jury will be equally final and conclusive with the verdicts at present returned in trials by Jury in the Court of Session, but with all and the like remedies by Bill of Exceptions, Motions for New Trials, or otherwise at present competent.

Where Verdict for Service, case to be remitted to Sheriff. In every case in which a Jury shall find a verdict in favour of a Party petitioning to be served, the Court must, at the same time with applying such verdict, remit to the Sheriff from whom the case was advocated, with instructions to pronounce a Decree serving the said party in terms of this Act, which Decree may thereafter be extracted, and the extract thereof recorded and given out in manner and to the effect before stated. § 17.

CHAPTER VIII.

REVIEW OF SHERIFF'S JUDGMENT SERVING OR REFUSING TO SERVE.

Reduction. As already mentioned, Chapter V., the Decree of Service recorded and extracted, is not liable to challenge, nor to be set aside, except by a Process of Reduction before the Court of Session, as heretofore in use with regard to Services duly retoured to Chancery. § 13.

In every case in which a process of reduction of any de-Procedure.
cree of service shall be brought before the Court of Session,
it shall be competent to the Court, if it shall appear neces-
sary for the right determination of the case, either to allow
farther or additional evidence to be taken in such manner as
may appear proper, or to appoint the case, or special issues
therein, to be tried by a Jury; and such Jury Trial shall
proceed in the same manner and to the like effect, and with
all and the like remedies as are provided in regard to Jury
Trials under Notes of Advocation and judgment pro-
nounced.

Wherever the judgment of the Sheriff brought under
reduction, has proceeded on competing Petitions conjoined,
and the Court of Session determined that a different per-
son should be served from the person preferred by the She-Remit to
riff, a remit must be made to the Sheriff, with instructions Sheriff.
to pronounce a Decree serving the said person in terms of
this Act, which Decree may thereafter be recorded, and an
extract thereof given out in manner and to the effect before
stated.

In case of reduction of a Service, the Judgment is con-Judgment
clusive, as between the parties to the suit, against the party conclusive
whose service is reduced, and has the same effect as if the between
action had contained a conclusion of Declarator that the Parties.
party served was not entitled to be served in the character
or claim, and judgment had been pronounced in terms of
that conclusion. § 19.

In every case in which the Sheriff has refused to serve a Where Sher-
Petitioner, or dismissed his Petition, or repelled the objec-riff refuses
tions of an opposing party, it is declared lawful to bring to serve
the Judgment under review by a Note of Advocation Advocation
presented to the Court of Session. may be
brought.

Such Note must be presented within fifteen days, or Time, Inti-
where the proceedings have been taken in the Courts of mation, &c.
Orkney or Shetland, thirty days from the date of the She-

riff's Judgment; and where the Judgment has been pronounced after opposition duly entered, or in competition, such Note must be intimated to the opposite party, and a Bond of Caution for Expenses lodged with the Sheriff-Clerk, in like manner and under the same regulations as in the case of Advocations of final Judgments of the Sheriff-Courts of Scotland, according to the presently existing practice, and such Note must be proceeded with in like manner with the Notes of Advocation against final judgments of the Sheriff Courts.

Procedure.

Court of Session may allow additional Evidence, or remit for Trial by Jury.

It is competent to the Court of Session, if it shall appear necessary for the right determination of the case, to allow farther or additional evidence to be taken, or to remit to the Sheriff to take the same, or to appoint the case, or special Issues therein, to be tried by a Jury, in manner and to the effect, and with all and the like remedies by Bill of Exceptions, Motion for new Trial, or otherwise, at present competent, and such judgment shall be pronounced on such Note of Advocation as shall be just; provided, that in every case in which the Sheriff has refused to serve, but in which the Court of Session shall be of opinion that the party ought to be served, a remit shall be made to the Sheriff, with instructions to pronounce a Decree serving the party in terms of this Act, which Decree may be thereafter recorded and extracted in manner and to the effect before mentioned.

Remit to Sheriff where a Party ordained to be served.

Right to Petition of new, or to bring reduction reserved.

The Statute farther enacts, that nothing therein contained shall prejudice the right of any person whose Petition of Service shall be refused without any opposing or competing party having appeared and been heard on the merits of the competition, to present a new Petition at any time thereafter, or the right of either party in any of the proceedings authorised to take place in the Sheriff-Court to bring under challenge whatever judgment may be pro-

nounced therein, by process of Reduction before the Court of Session on any competent ground. § 18.

All proceedings authorised by the new Statute to be taken in the Court of Session, must commence and be carried on in the same manner, with the same description of proceedings in ordinary Civil Cases; and any judgment pronounced by the Lord Ordinary therein may be brought under review of the Inner-House by Reclaiming Note, in like manner as in such cases; and all judgments to be pronounced by the Court of Session in terms of this Act are declared to be equally final and conclusive as the judgments pronounced by that Court in ordinary Civil Cases, and not liable to review by reduction or otherwise, save and except to such extent and effect as judgments by the said Court in ordinary Civil Cases are so liable.

It is competent to Appeal against the judgments of the Court of Session, under this Act, to the House of Lords, in like manner as against judgments of the Court in ordinary Civil Cases. § 20.

CHAPTER IX.

SHERIFF OF CHANCERY.

The Crown is authorised by the Statute to appoint a fit person, being a person qualified for the office of Sheriff of a County in Scotland, to be the Sheriff of Chancery, for the purposes of the Act; and also to appoint a fit person to act both as Sheriff-Clerk of Chancery and as Clerk to the Presenter of Signatures in Exchequer. § 29.

The Sheriff of Chancery, when required by the Lord Justice General, is bound to discharge the duties attached to the office of Presenter of Signatures. § 30.

The Statute enacts, That the Sheriff of Chancery shall

Forms and
Effect of
Procedure
in the Court
of Session.

Appeal to
House of
Lords.

Sheriff of
Chancery
to be ap-
pointed.

To discharge
Duties of
Presenter of
Signatures.

Jurisdiction
of Sheriff of
Chancery.

have and possess such and the like authority and jurisdiction to entertain, try, and adjudicate, but in the manner prescribed and directed by this Act, all questions of and relating to the Service of Heirs, as any Sheriff or Judge Ordinary now has and possesses in any case competent before such Sheriff or Judge Ordinary, or in any case competent before the Sheriff of Edinburgh, acting on Special Commission; and that such Sheriff of Chancery and his Substitute shall hold their Courts in any Court Room within the Parliament or new Session House of Edinburgh, which may be assigned by the Lords of Session for that purpose, or in which the Sheriff of Edinburgh is in use to sit for the trial of any brieve. § 27.

Remuneration.

The Remuneration to be received by the Sheriff and Sheriff-Clerk of Chancery, is also regulated by the Statute. §§ 32, 33.

CHAPTER X.

RECORDS.

Records.

The mode of keeping the Records relating to Services in Chancery, making an Index thereof, and publishing the same, the transmission of the Records by the Sheriff-Clerks to Chancery, the forms of Notices, and other matters of detail, including the remuneration to the Clerks of Chancery, are partly fixed by the Statute, and otherwise left to be settled by Act of Sederunt. §§ 14, 15.

CHAPTER XI.

AGENTS.

Agents.

It is declared lawful and competent for Agents qualified

to practise before the Court of Session, or before any Sheriff-Court, to practise before the Sheriff of Chancery as well as in the ordinary Sheriff-Courts in Petitions of Service. § 31.

The fees to be paid in respect of any of the proceedings ^{Fees.} to be taken in virtue hereof, and also the Charges to be made by Agents and Solicitors, whether in the Inferior Court or Court of Session, for any proceedings under this Act, shall be audited and taxed in the same manner as charges for other judicial proceedings in the said Courts respectively are audited and taxed. § 28.

CHAPTER XII.

ACTS OF SEDERUNT.

The Court of Session are authorised and required to pass ^{Acts of Sederunt.} such Acts of Sederunt as shall be necessary or proper for regulating, in all respects, the proceedings under this Act before the Sheriff of Chancery or Sheriffs of Counties, and for following out the purposes of this Act. § 28.

CHAPTER XIII.

COMPENSATION.

Compensation is provided in the usual manner for per- ^{Compensation.} sons suffering loss through the operation of the Act. §§ 34, 35.

CHAPTER XIV.

INTERPRETATION OF WORDS.

Words. The construction and meaning of the words in the Act are regulated by a special clause (§ 36), which requires particular attention.

ANALYSIS

OF

TRANSFERENCE OF LANDS ACT.

CHAPTER I.

PRELIMINARY.

VERY extensive changes and improvements on the Law of Scotland relating to Conveyancing are effected by the present Statute, which it may be useful briefly to enumerate generally, before discussing the special enactments in the Act. ^{General Objects.}

1. The substitution of certain clauses of a few words each for the prolix ones hitherto used in deeds for the conveyance of land in Scotland, and termed the Obligation to infeft, the Procuratory of Resignation, the Assignment to the Writs and Rents, the Obligation to free and relieve the disponent of Feu Duties and Public Burdens, the Clause of Warrantice, and the Registration Clause.

2. A dispensation with the insertion of the conditions of an Entail and of Real Burdens, Conditions or Limitations, under which Lands may be held, in the subsequent titles, and declaring that reference to the conditions and others, as contained in the Entail or some registered Instrument of Sasine, forming part of the progress of titles, shall be sufficient.

3. A brief form of a Charter of Confirmation to be granted

General
Objects.

either by the Crown or Subjects-Superior, and an appointment on Subjects-Superior to grant Charters of Confirmation when required.

4. Modes, in place of a Process of Declarator of Tinsel of Superiority, for completing a vassal's title where the Heir or Successor of his immediate Superior lies out unentered.

5. A provision that Precepts of *Clare constat* shall not fall by the death of the granter.

6. The abolition of Letters of General Charge, Letters of Special Charge, and Letters of General Special Charge in reference to Actions of Constitution and Adjudication.

7. The abolition of Bills for Summonses of Adjudication and Ranking and Sale, and of the conclusion in Summonses of Adjudication for Special Adjudication, and a provision for the insertion of a Warrant for Infetment in Decrees of Adjudication, whether for Debt, or in Implement, and in Decrees of Sale.

CHAPTER II.

FUTURE FORM OF CONVEYANCES.

The present Narrative or Inductive Clause, the Dispositive Clause, the Precept of Sasine, and the Testing Clause, are left unaltered by the new statute; but it is declared lawful and competent (§ 1, Schedule A.) to abridge all the other clauses in the following manner :—

Clause de-
claring the
term of En-
try.

1st, In place of the declaration hitherto in use, to be inserted in the clause of assignation to the rents, or in the obligation to free the subjects of public burdens, with respect to a purchaser's term of entry, the following words may be introduced immediately after the dispositive clause, " With entry at the term of (*here specify the term of entry*)."

2*d*, The Obligation to infest may be thus expressed : “ And I oblige myself to infest the said (*here insert the name of the disponee*), and his foresaids, to be holden *a me*” (or *de me*, or *a me vel de me*, as the case may be). ^{Obligation to infest.}

This clause, the Statute (§ 2) enacts, shall, if limited to an obligation to infest *a me* only, be held to imply an obligation on the Disponer to infest the Disponee and his Heirs and Assignees, in the subjects conveyed, upon their own expenses, to be holden from the Disponer, and his Heirs and Successors, of and under their immediate lawful superiors, in the same manner as the disponer himself, or his predecessors or authors, held, hold, or might have holden the same, and that either by resignation or confirmation, or both, the one without prejudice of the other ; and the obligation to infest, if granted to be holden *a me vel de me*, shall be held to imply an obligation on the disponer to infest the disponee, and his heirs and successors, upon their own expenses, by two several infestments and manners of holding, one thereof to be holden of the disponer, and his heirs and successors, in free blench, for payment of a penny Scots in name of blench farm, at Whitsunday yearly, upon the ground of the lands, if asked only, and freeing and relieving him and them of all feu duties, and other duties and services exigible out of the said lands and others, by their immediate lawful superiors thereof ; and the other of the said infestments to be holden from the granter and his foresaids of and under their said immediate lawful superiors, in the same manner as the granter, or his predecessors or authors, held, hold, or might have holden the same, and that either by resignation or confirmation, or both, the one without prejudice of the other.

3*d*, The Procuratory of Resignation may be thus expressed : “ And I resign the said lands and others for new ^{ex-Procuratory of Resignation.} infestment.”

This the Statute (§ 3) enacts shall be held and taken to

be equivalent to a Procuratory of Resignation in the terms now in use, and in the case of Conveyances by a vassal to a Superior as equivalent to a Procuratory of Resignation *ad remanentiam*.

Assignment
to the Writs
and Clause
of Delivery
of Titles.

4th, The Assignment to the writs and clause of delivery of the titles may be thus expressed:—" And I assign the writs, and have delivered the same, according to inventory."

The Statute (§ 3) enacts, that such Assignment of writs and evidents, unless specially qualified, shall be held to import an absolute and unconditional Assignment to such writs and evidents, and to all open procuratories and precepts therein contained, to which the disposer has right. Where, therefore, the titles relate to other subjects than those disposed, the clause of Assignment will fall to be limited accordingly.

Assignment
to the Rents.

5th, The Assignment to the rents may be thus expressed, " And I assign the rents."

This, the Statute enacts, shall, unless specially qualified, be held to import an Assignment to the rents to become due for the possession following the term of entry, according to the legal, and not the conventional, terms, unless in the case of forehand rents, in which case it shall be held to import an Assignment to the rents payable at the conventional terms subsequent to the date of entry. The operation of this statutory explanation of the clause, as given in the Schedule, will require the special attention of the Conveyancer in framing any Deed in which it occurs.

Obligation
to relieve
the Lands
of public
burdens.

6th, The obligation to relieve the subjects of public burdens may be thus expressed: " And I bind and oblige myself to free and relieve the said (*here insert the name of the disponent*), and his foresaids, of all feu duties, casualties, and public burdens."

This clause, the Statute (§ 3) enacts, shall, unless specially qualified, be held to import an obligation to re-

lieve of all feu duties, or other duties and services or casualties payable to the superior, and of all public, parochial, and local burdens due from or on account of the lands prior to the date of entry.

7th, The Clause of Warrandice may be thus expressed : Clause of Warrandice.
 “ And I grant Warrandice.”

This clause, the Statute (§ 3) enacts, shall, unless specially qualified, be held to imply absolute Warrandice as regards the Lands and Writs and Evidents, and Warrandice from fact and deed, as regards the rents. Hence, where a right of superiority is conveyed, the feu rights will fall to be excepted from the Warrandice.

8th, The Clause of Registration may be thus expressed : Clause of Registration.
 “ And I consent to Registration hereof for preservation (or for preservation and execution).”

This clause, the Statute (§ 3) enacts, shall, unless specially qualified, import a consent to registration, and a procuratory for registration in the Books of Council and Session, or other Judges' books competent, therein to remain for preservation; and also, if for execution, that letters of horning and all necessary execution shall pass thereon upon six days' charge, on a decree to be interponed thereto in common form. Will this Statutory explanation allow the keepers of records to annex to extracts the warrant to charge and arrest authorised by the Statute 1st and 2d Victoria, cap. 114?

In the event of its being necessary to omit, vary, or qualify any one or more of the Clauses authorised by the Schedule, this may be done, and the other Clauses may be retained. Note to Schedule A.

Where lands are held under a Deed of Entail, the new Conditions of Entail Statute dispenses with the insertion in the future titles of may be referred to as already in the Register of Entails, or Register of Sasines. the conditions of the Entail, provided such conditions be referred to as contained in the Recorded Entail, or a Recorded Instrument of Sasine, forming part of the progress

of title deeds of the lands under the Entail, such reference being made in the terms, or as nearly as may be in the terms, set forth in Schedule B. annexed to the Act. § 4.

Real Bur-
dens may be
referred to
as already
in the Re-
gister of
Sasines.

In like manner, in all cases where lands are held under any real burden, condition, or limitation, appointed to be inserted in the future investitures, the Statute (§ 5) dispenses with such insertion, provided reference be made to such real burden or others as contained in the Recorded Instrument, whether of Sasine or of Resignation *ad remanentiam*, wherein the same were first inserted, or in any subsequent Recorded Instrument of Sasine, such reference being made in the terms, or as nearly as may be in the terms, set forth in Schedule C. annexed to the Act.

CHAPTER III.

ENTRY BY CONFIRMATION.

Superior
may be com-
pelled to
grant Char-
ter of Con-
firmation.

The Statute (§ 6) empowers any person Infeft in lands or heritages holden of a Subject Superior upon a Disposition or other Deed of Conveyance, containing an Obligation to infeft *a me vel de me*, granted by the person last entered and infeft, or granted by a person whose own title is capable of being made public by Confirmation, according to the existing law and practice, or upon a Decree of Special Service, or upon a Decree of Adjudication or of Sale, containing a Warrant of Infeftment, upon production to the Lord Ordinary on the Bills in the Court of Session of his Sasine in the land and warrants of the same, and upon shewing the terms and conditions under which the lands are holden of the Superior, to obtain warrant for letters of Horning, to charge the Superior to grant in favour of such party a Charter of Confirmation in the same way and form as is provided and in use for compelling entry by resignation.

The Charger must pay or tender to the Superior the duties and casualties to which he is entitled upon the entry of the Charger. The Superior may object to the charge by a Note of Suspension in the usual manner.

The Superior is entitled to insert in the Charter the clauses of Tenendas and Reddendo contained in the former Charters, and all other clauses and conditions contained therein, in so far as the same are usual and necessary, and are not set forth in the Charger's Instrument of Sasine, or duly referred to in terms of this Act, or of an Act also passed in the same Session of Parliament (10th and 11th Vict., cap. 47) intituled "An Act to amend the law and practice of Scotland as to the Service of Heirs."

Where such Clauses and Conditions are set forth in such Instruments of Sasine, or duly referred to in terms of this Act or any other Act, the same shall not, without the vassal's consent, be repeated at length in the Charter of Confirmation. § 6.

FORM OF CHARTER OF CONFIRMATION.

The Statute (§ 7) authorises Charters of Confirmation, whether granted by the Crown or Prince of Scotland, or by a Subject-Superior, to be in the abridged form set forth in a Schedule (D.) annexed to the Act, by which it is rendered unnecessary specially to confirm the whole series of titles from the date of the last entry with the Superior, as heretofore in use, but only the infestment in favour of the party obtaining the Charter.

The Forms of Crown Charters of Confirmation given in the Crown Charters Act, 10th and 11th Vict., cap. 51 (Schedule C, Nos. 2 and 3), whereby the confirmation of the whole series of titles is enjoined, appear to be at variance with the permission here given specially to confirm only the Instrument of Sasine in favour of the person receiving the Charter.

Held to confirm previous titles though not enumerated in Charter.

The Statute declares that the Charter, in whatever habile form expressed, shall be held to confirm in favour of the Grantee the whole Dispositions and Instruments of Sasine, and other Deeds, Instruments, and Writings of and concerning the lands, so far as regards the same heretofore necessary to be confirmed in order to complete the Grantee's investiture in the lands as immediate Vassal to the Granter, and that although such Deeds, Instruments, and Writings may not be enumerated or set forth in such Charter. § 7.

CHAPTER IV.

MODES OF COMPLETING VASSAL'S TITLE, WHERE HEIR OR SUCCESSOR OF IMMEDIATE SUPERIOR UNENTERED.

In order to give greater facilities than have been afforded by the process of Tinsel of Superiority to enable Vassals, the Heirs or Successors of whose immediate Superiors lie out unentered, to complete their Title, the Statute has introduced various remedies and provisions.

A distinction is made between lands, the annual reddendo of which does not exceed L.5 sterling in value or amount, and where the annual reddendo exceeds that sum.

1. *Where the Annual Reddendo does not exceed L.5.*

Where the reddendo does not exceed L.5.

One or other of two modes may in that case be adopted, provided the person having right to a Superiority not feasible at the will of the vassal or disponent, has not completed his feudal title, so as to enable him to enter any heir or disponent of the vassal last publicly infeft, or any adjudger or other party deriving right from him, and provided such heir, disponent, adjudger, or other party, would have been entitled to compel entry in virtue of this Act, or of the Act 20th Geo. II. c. 50.

First Mode.—The vassal may present a petition to the

Lord Ordinary on the Bills, in the form, or as nearly as may be in the form, given in Schedule (E.) No. 1, annexed to the Act, praying for Warrant of Service on the person having right to the superiority, and that he may be ordained to procure himself entered and infeft in the lands, and to enter the Petitioner in the same, on payment of the duties and casualties exigible on such entry, or else to shew cause for delaying or refusing to do so, with certification that if he fail, he shall forfeit and amit all right to the superiority; and in the event of failure, that it should be found and declared that he has forfeited and amitted all right to the superiority, and that the Petitioner, and his heirs and successors, are entitled to hold the lands in all time coming as vassals immediately of and under the next over-superior, by the tenure and for the reddendo by and for which the forfeited superiority was held.

First mode
by Petition
to Lord
Ordinary for
forfeiture of
immediate
superior's
right of
superiority.
Form of
Petition.

On the presentment of such Petition, accompanied with the title of the Petitioner, the Lord Ordinary grants warrant for service and an order on the defendant as craved, on *induciae* of thirty days after the date of service where he is within Scotland, other than in Orkney and Shetland, and of sixty days if he be furth of Scotland, or in Orkney or Shetland, all in the form given in a Schedule (E.) No. 2, annexed to the Act.

Service of
Petition.

If, after such service and the expiration of the days of intimation, the defendant does not comply with the demand of the Petition, by completing his title and granting entry to the Petitioner, or does not shew reasonable cause to the Lord Ordinary why he delays or refuses so to do, he forfeits and amits all right to the superiority, and the Lord Ordinary pronounces decree or judgment accordingly, to the effect of entitling the Petitioner, his heirs and successors, in all time thereafter, to hold the lands as vassals, immediately of and under the next over-superior, by the tenure and for the reddendo by and for which the forfeited

Decree en-
abling Peti-
tioner to
hold lands
of mediate
superior.

superiority was held. The judgment of the Lord Ordinary is appointed to be given in the form, or as nearly as may be in the form, of Schedule E. No. 3, annexed to the Act, and when extracted and recorded in the Register of Sasines appropriate to the lands, shall be held absolutely to extinguish such right of superiority, and enables the petitioner to apply to such over-superior as his immediate superior for an entry accordingly.

Form of
Decree.

No provision is made by the Statute for compelling the mediate superior to grant the entry, and he is not even mentioned in the statutory form of the Petition. A separate and subsequent action at law would therefore appear necessary.

Tenendas
and Red-
dendo of
Renewed
Investiture.

In the renewed investiture to be obtained by the Petitioner under the authority of the said decree, the Tenendas and Reddendo contained in the title deeds of the forfeited superiority must be inserted in room of those contained in the investiture of the Petitioner's predecessor or author, and the lands held by the Petitioner and his successors, according to the tenure of the forfeited superiority, in all time thereafter; and the Charter or Precept in the Petitioner's favour is directed to be expressed as nearly as may be, in one or other of the forms given in Schedule I, annexed to the Act. § 8.

Form of
Charter or
Precept.

Effect.

The investiture thus completed upon the forfeiture of the superiority by the apparent Heir, is declared, in all respects, and to all intents and purposes, to be as effectual as if such apparent Heir had completed his titles to the superiority, and thereafter conveyed the same to the Petitioner; and the latter, after completing his titles under the over-superior, had resigned, *ad remanentiam*, in his own hands: Provided always, that the title so completed shall not, in any respect, extend the interests of such over-superior, and that he shall be entitled to no more than the casualties, whether taxed or untaxed, to which he would have been entitled if such apparent Heir had remained his vassal. § 12.

Over-Supe-
rior's Rights
not to be ex-
tended or af-
fected.

It is presumed, that the same declaration is meant to apply to the case of the forfeiture of the Superiority being not by an apparent Heir, but by some other person having right to the Superiority.

In case of a forfeiture of Superiority by an apparent Heir, in manner above mentioned, the vassal obtaining the same, and making up titles under the over-superior, is declared liable, but subject always to retention of expenses, for the value of the Superiority, to the Heir apparent, or any person in his right, or having interest, as accords of law. § 13.

Vassal obtaining Forfeiture of Superiority liable for its Value.

The forfeiture by the apparent Heir does not infer a passive representation on his part, nor any liability for the debts of the person last infeft therein, beyond the price, if any, which he may receive for the forfeiture; and the vassal is not accountable, in any case, for more than the value of the forfeited right. § 13.

Forfeiture not to infer Representation by Heir Apparent.

The forfeiture of the Superiority takes effect, although the Superiority forms part of an estate held under prohibition against alienation, or under clauses prohibitory, irritant, and resolute of entail; but such forfeiture shall not be construed as, nor be held nor taken to imply, any contravention of such prohibition against alienation, or of such clauses prohibitory, irritant, and resolute of entail. § 14.

Where forfeited Superiority part of an Entailed Estate.

No provision appears to be made in the Statute for ascertaining the value of the forfeited Superiority, although such provision is made with respect to the value of a Superiority relinquished, as after mentioned.

Where the Reddendo payable for the forfeited Superiority includes that for other lands, besides those belonging to the Petitioner, a clause of relief will, it is presumed, fall to be inserted in the Charter or Precept.

Second Mode.—The vassal may present a Petition to the Lord Ordinary on the Bills, in the form, or as nearly as may be in the form, in Schedule F, No. 1, annexed to the

Second Mode.—By Petition to Lord Ordinary for

Charter or
Precept
from Crown,
or Prince,
or mediate
Superior, in
vice of the
immediate
Superior.

Form of Pe-
tition.

Act, praying for warrant of Service on the person having right to the Superiority ; and that he should be ordained, within thirty days after the date of such service, if within Scotland, other than in Orkney and Shetland, or if furth of Scotland, or in Orkney or Shetland, within sixty days, to procure himself entered and infest in the lands, and to enter the Petitioner in the same, on payment of the duties and casualties exigible on such entry, or else to shew cause for delaying or refusing to do so, with certification that if he fail, he shall forfeit and amit all right to the duties and casualties payable on the entry of the Petitioner ; and that the Petitioner shall be entitled to retain from him and his successors, as immediate Superiors, the yearly feu-duties and whole other prestations, until fully paid and indemnified for all the expenses of the Petition, and procedure thereon, and for all the expenses of completing the Petitioner's title, in terms of the Act ; and thereafter, on resuming consideration of the Petition, with or without Answers, to find and declare that the Defendant has forfeited and amitted all right to the dues and casualties payable on the entry of the Petitioner ; and that the Petitioner is entitled to retain from him and his successors, as immediate Superiors, the yearly feu-duties, and whole other prestations, until fully paid and indemnified for all the expenses of the Petition, and of the procedure to follow thereon, and for all the expenses of completing the Petitioner's title, in terms of the Act ; and to grant warrant to the Petitioner to apply for and obtain an entry in the Lands from the Crown or Prince of Scotland, or the mediate Over-Superior, as acting in the vice of the Defendant, and to authorise decree to the above effect to be extracted *ad interim* ; and thereafter, upon the completion of the Petitioner's title, by an entry from the Crown or Prince of Scotland, or such mediate Over-Superior, to remit the accounts of the ex-

penses of the Petition and procedure, and of the expenses of completing the Petitioner's title, to the Auditor to tax the same, and to report; and to modify the amount of the said expenses, and to decern for retention of the amount thereof as aforesaid; or in the event of the Defendant relinquishing the Superiority, to find, decern, and declare the same to be extinguished, in manner and to the effect expressed in the Statute. § 9, Schedule F, No. 1.

On this Petition being presented, and the title of the Petitioner produced, the Lord Ordinary grants warrant for Service, in terms of the Interlocutor given in Schedule F, No. 2, annexed to the Act. Service of Petition.

If, after such service and expiration of the days of charge, the Person having right to the Superiority, Defendant, does not comply with the demand of the Petitioner, by completing his title, and granting entry to the Petitioner, or does not shew reasonable cause to the Lord Ordinary why he delays, or refuses so to do, he forfeits and amits all right to the dues and casualties payable on the entry of the Petitioner, who is entitled to retain his feu duties, or other annual prestations, until fully paid and indemnified for all the expenses of the Petition and procedure thereon, and all the expenses of completing his title in terms of the Act; and the Lord Ordinary pronounces Interim Decree to that effect, and grants interim warrant for the Petitioner applying for and obtaining an entry from the Crown or Prince of Scotland, or, in the option of the Petitioner, from the mediate over-superior, as acting in the vice of such superior, all in the form, or as nearly as may be in the form, given in Schedule F, No. 3, annexed to the Act. Forfeiture of Dues and Casualties by immediate Superior.

The Petitioner is thereupon entitled to lodge, along with an extract of the said Decree, in the Office of the Presenter of Signatures, a Draft of the proposed or Charter Precept from the Crown or Prince, as in vice of such superior, with a short note in terms of the Act 10th and 11th Vict., cap. 51, Interim Decree by Lord Ordinary. Petitioner may obtain Charter or Precept from the Crown or Prince.

intituled, "An Act to amend the practice in Scotland with regard to Crown Charters and Precepts from Chancery;" and the Charter or Precept, for which the said Extract Decree shall be a sufficient warrant, may be in the form given in the Schedule H. annexed to the Act, and shall be as effectual as if granted by the mediate superior of the feu, when duly infeft in the superiority.

Or from
mediate
over-superior.

In place of applying to the Crown for a Charter or Precept, the Petitioner may, where there is a mediate over-superior, go to him; and the Extract Decree forms a sufficient warrant for Letters of Horning to charge such over-superior to enter the Petitioner, by granting a valid Charter or Precept, as in vice of the superior.

No notice of the presentment of the Petition for temporary forfeiture of the superiority, either to the Crown or Prince, or to the mediate over-superior, from whom the entry is to be ultimately required, is necessary by the Statute, although, as the mediate over-superior is exposed to a charge of horning on the Decree to be obtained on such application, such notice would be desirable. The mediate over-superior fell to be called as a party defender in the process of Tinsel of Superiority under the Act 1474, cap. 57.

Expenses.

After completion of his title the Petitioner is entitled, if he thinks fit, to lodge, as part of the proceedings under the Petition, an account of the expenses of that process, and of completing his title; and the Lord Ordinary shall, if required on the part of the Petitioner, modify the amount thereof, and decern for retention of the same, in the form given in Schedule F, No. 4, annexed to the Act. § 9.

Lands to be
held temporarily
of the Crown
or Prince or
Mediate Superior.

The lands contained in such Charter or Precept from the Crown or Prince, or the mediate over-superior, as in vice of the unentered immediate superior, shall be holden of the grantor, as in vice of such immediate superior, while and so long as he and his successors, the immediate superiors thereof, remain unentered, and thereafter until a new entry in

favour of the vassal or his successors shall become requisite.

§ 10.

The forfeiture of the dues and casualties payable upon the entry of the Petitioner, takes effect although the superiority forms part of an estate held under prohibitions against alienation or under entail, and does not imply any contravention of the prohibition or entail. § 14.

Where Superiority temporarily forfeited part of an Entailed Estate.

But an important question remains behind, viz., What are the rights of the mediate Superior, after the Crown, or he as in vice of the immediate Superior unentered, has granted a Charter to the Vassal, under which he is entitled to retain his feu duty?

Can the Mediate Superior resort to Action of Non-Entry after granting Charter in vice of Superior unentered?

In the case of the superiority of the immediate superior being permanently forfeited, as may take place where the reddendo does not exceed L.5, the vassal will thereafter hold of the party who was formerly the mediate superior, who will thus have an entered vassal; but the state of matters is very different where the vassal petitions only for a temporary forfeiture of the superiority, with right to retain his feu duty and other prestations. In that case the mediate superior remains without a vassal, and without payment of feu duty or casualties. This is a position of affairs to which neither the former law, nor, it is thought, the New Statute, forces the mediate superior to submit, and it would be manifestly inequitable.

The mediate superior therefore appears entitled, notwithstanding that either the Crown or he has granted a Charter in vice of the immediate superior unentered, to pursue an Action of Declarator of non-entry against him, and after Decree to enter into possession, and thus render the Charter obtained by the vassal from the Crown or Mediate Superior in the vice of the immediate superior, of no avail, and, after all, compel the vassal to resort to a process of Tinsel of Superiority for his protection. This view is supported by the consideration that the Mediate Superior

Effect would be to render a Charter granted by vice nugatory.

is not made a respondent to the Vassal's Petition for temporary forfeiture of the superiority, and may never hear of it if the Vassal applies to the Crown for the Charter. The Mediate Superior fell to be made a party defender in the Summons of Tinsel of Superiority, and to be ordained to accept of the pursuer as his vassal.

2. *Where the annual reddendo exceeds L.5.*

Where the
annual Red-
dendo ex-
ceeds L.5.

In that case the Vassal can obtain himself entered with the Crown, or Prince, or the Mediate Over-Superior as acting in the vice of the immediate superior, by the second mode above specified, after the same procedure, and under the same conditions and declarations in all respects; and cannot apply for an absolute forfeiture of the superiority as is permitted where the reddendo does not exceed L.5 in value annually. § 9.

The right of the Mediate Superior to pursue an Action of Declarator of non-entry against the Immediate Superior unentered, after a Charter has been granted in vice of such superior, as above explained, requires special consideration.

CHAPTER V.

RELINQUISHMENT OF SUPERIORITY.

Relinquish-
ment of Su-
periority.

In order farther to diminish the inconvenience arising from the existence of mid-superiorities, the Statute enacts, that when a Petition shall be presented to the Lord Ordinary on the Bills by a vassal in manner above mentioned, praying for warrant of Service, and for decree against any person having a right to the superiority of any Lands, but who has not completed his feudal title thereto, "whether the annual reddendo shall be above or below the value or amount of L.5 sterling," (should have been, *whether the annual reddendo exceeds the sum of L.5 or not*) it shall be

competent for him at any time before the expiration of the Minute of Relinquishment may be lodged by Immediate Superior.
 days of intimation, or before interim decree shall have been extracted, to lodge, as part of the proceedings under such Petition, a Minute, signed by himself or by his Mandatory or Agent, duly authorised by him in writing, stating that he tenders relinquishment of the right of Superiority which he holds on apparenry, in favour of the Petitioner, and his heirs and successors; and that such minute shall be in the form, or as nearly as may be in the form, given in Schedule Form of Minute.
 G, No. 1, annexed to the act.

If the Petitioner shall, by himself or by his Counsel or Agent, subscribe or indorse upon such Minute an acceptance of the same in the form given in Schedule G, No. 2, Acceptance, Form of.
 annexed to the Act, the Lord Ordinary is authorised and required on the Petitioner's motion, to interpone his authority to such minute and acceptance, and to decern and decree by Lord Ordinary declaring Relinquishment.
 declare the right of superiority thus relinquished to be extinguished, to the effect of making the Petitioner and his successors in the lands hold the lands as vassals immediately of and under the Superior of the relinquished superiority in permanency, and by the tenure, and for the reddendo by and for which such relinquished superiority was held. The decree so to be pronounced falls to be in the form, or as nearly as may be in the form, in Schedule G, Form of Decree.
 No. 3, annexed to the Act.

Such decree, when extracted and recorded in the Register of Sasines appropriate to the lands, entitles the Petitioner, his heirs and successors, to apply for an entry to Vassal may thereupon apply for Entry from Mediate over-superior.
 the mediate over-superior as his future immediate superior, and in the renewed investiture to be obtained by the Petitioner under the authority of the said decree, the tenendas and reddendo contained in the title-deeds of the relinquished superiority must be inserted in room of those contained in the investiture of the Respondent, (represented in the Statute inaccurately as the "Petitioner's Predecessor or

author,") and the Lands will be held by the Petitioner and his successors according to the tenure of the relinquished superiority in all time thereafter.

No provision is made by the Statute for the case of the mediate over-superior declining to enter the Petitioner.

Form of
Charter or
Precept by
Mediate
over-supe-
rior.
Relinquish-
ment may
be declined
by Vassal.

The Charter or Precept, as the case may be, in the Petitioner's favour, may be expressed in one or other of the forms given in Schedule I. annexed to the Act.

It is not imperative on the Petitioner to accept of the offered relinquishment, and to take the place of his immediate superior. If the Petitioner prefers it, he is entitled to refuse the offered relinquishment, and to complete his title by entry from the Crown or Prince of Scotland, or the mediate over-superior, as in the vice of his immediate superior. § 11.

Effect of
such Inves-
titure.

The investiture thus completed upon the relinquishment of the superiority by such apparent heir, and acceptance by the Petitioner, is, in all respects and to all intents and purposes, as effectual as if such apparent heir had completed his titles to the superiority, and thereafter conveyed the same to the Petitioner, and as if the latter, after completing his titles under the over-superior, had resigned *ad remanentiam* in his own hands. The title so completed, in no respect, however, extends the interests of such over-superior, and he is entitled to no more than the casualties, whether taxed or untaxed, to which he would have been entitled if such apparent heir had remained his vassal. § 12.

Vassal liable
for value of
Relinquished
Superiority.

In case of such relinquishment of superiority by any apparent Heir, the vassal accepting the same, and making up titles under the over-superior, is liable, but subject always to retention of expenses, for the value of the superiority to the apparent heir, or any person in his right, or having interest, as accords of law.

Relinquish-
ment does
not infer
representa-
tion by
Apparent
Heir.

Such relinquishment by such apparent heir does not infer a passive representation on his part, nor any liability

for the debts of the person last infeft in the superiority, beyond the price, if any, which he may receive for such relinquishment; and the vassal, if he accepts thereof, is not accountable in any case for more than the price of the relinquished right. § 13.

As the Minute of relinquishment must specify whether the apparent heir is willing to renounce the superiority gratuitously, or, if a price is required, to state the amount, the difficulty before alluded to, in ascertaining the value of a forfeited superiority, will not occur in the case of a relinquished right.

The relinquishment is lawful and competent, although the superiority shall form part of an Estate held under prohibition against alienation, or under Entail; but such relinquishment shall not imply any contravention of such prohibition or Entail; and the price or value of such superiority relinquished shall be applicable and applied in such and the like manner, and to such and the like purposes as purchase-money, or compensation coming to parties having limited interests, is made applicable under the Lands Clauses Consolidation (*Scotland*) Act 1845; and in the event of the Petitioner holding his Estate under Entail, such price or value paid for the relinquished superiority shall be taken and held to be Entailer's debt, and all remedies competent to the Creditor for recovery of Entailer's debt, and all remedies, powers, and faculties competent to an Heir of Entail in possession for payment of Entailer's debt, whether at common law, by statute, or otherwise, shall be competent to such Creditor and to such Petitioner, and their heirs and representatives respectively. § 14.

Where Superiority relinquished part of an Entailed Estate.

CHAPTER VI.

PRECEPTS OF *CLARE CONSTAT* NOT TO FALL BY DEATH OF THE GRANTER.

Precept of
Clare con-
stat not to
expire on
death of the
granter.

To remove the inconvenience of the existing law by which a Precept of *clare constat* from a subject superior to his vassal, lapses and becomes ineffectual, if Sasine is not passed thereon in the lifetime of the granter, the Statute enacts, that all Precepts of *clare constat* already made and granted, and still subsisting in force, and all Precepts of *clare constat* to be made and granted hereafter, shall, notwithstanding the death of the granter thereof, remain in full force and effect during the whole lifetime of the grantee, and shall continue effectual as a warrant for giving infestment to the grantee in terms thereof, at any time during the grantee's life. § 15.

CHAPTER VII.

GENERAL AND SPECIAL, AND GENERAL SPECIAL CHARGES,
ABOLISHED WITH REFERENCE TO ACTIONS OF CONSTITUTION AND ADJUDICATION.

Charges
abolished.

Execution
of Summons
of Constitu-
tion implies
a general
charge.

The Statute enacts, that it shall no longer be competent to use letters of general charge or special charge, or general special charge, but in an action of constitution of an ancestor's debt or obligation against his unentered heir, the citation on, and execution of, the summons in such action shall be held to imply and be equivalent to a general charge, the *induciae* of which shall expire with the *induciae* of such summons, and shall infer the like certification with such general charge; and it shall thereafter be competent

to adopt under such summons the same procedure, in all respects, and to pronounce the same decree, which would have been competent had such summons been preceded by letters of general charge duly executed against such heir according to the existing law and practice, which decree shall be a valid decree of constitution: And in an action of Adjudication against such heir following on such decree of constitution, or in an action of Adjudication against an unentered heir founded on his own debt, the citation on, and execution of the Summons of Adjudication shall be held to imply and be equivalent to a special charge or general special charge, as the circumstances may require, the *induciae* of which charge shall expire with the *induciae* of such Summons, and shall infer the like certification with such special charge, or general special charge, as the case may be; and it shall thereafter be competent to adopt, under such summons, the same procedure in all respects, and to pronounce the same decree which would have been competent had such summons been preceded by letters of special charge, or general special charge, as the case may be, duly executed against such heir, according to the existing law and practice, which decree shall be a valid decree of Adjudication: And in an action of Constitution and Adjudication, combined in the same summons, against an unentered heir, it shall be competent to adopt the same procedure in all respects, and to pronounce the same decree, which would have been competent had such summons been preceded by letters of general charge duly executed against such heir, according to the existing law and practice; and in such combined action of Constitution and Adjudication, it shall be competent to pronounce decree of Constitution and Adjudication in one and the same interlocutor, and to extract the same in one and the same extract, which decree shall be a valid decree of Constitution and Adjudication; anything in an Act of the Parliament of Scotland passed

Execution of Summons of Adjudication implies a Special Charge, or General Special Charge.

Combined Summons of Constitution and Adjudication.

Decree of Constitution and Adjudication may be pronounced in same Interlocutor.

in the year 1540, and in another Act of the Parliament of Scotland passed in the year 1621, or in any other Act of Parliament, or any law or practice, to the contrary notwithstanding, the said Acts being repealed to the extent of making these enactments operative, but no further. § 16.

Charges to enter heir do not appear abolished, as preliminaries to other classes of actions against heirs who have not taken up the succession of their predecessors. For example, the general Charge required by the Statute 1695, cap. 41, at the instance of a creditor against the next of kin of a defunct debtor, before raising action against them as *hæredes in mobilibus* for a depending cause or claim on him, and the special Charge, requisite by the Act 1474, cap. 57, at the instance of a vassal against his superior previous to raising an Action of Declarator of Tinsel of Superiority. The New Statute, however, it will be noticed, is very broadly expressed as abolishing all Letters of Charge.

CHAPTER VIII.

ADJUDICATIONS AND RANKINGS AND SALE.

Bills for Summonses abolished. Bills for Summonses of Adjudication and of Ranking and Sale are abolished by the Act. § 17.

Special Adjudication need not be concluded for. It is no longer necessary to libel or conclude for special Adjudication in terms of the Act 1672, c. 19, intituled, "Act concerning Adjudications;" and it is lawful to libel and conclude and decern for general Adjudication without such alternative. § 18.

The Statute, on the preamble that a party who has obtained decree of Adjudication, or decree of Sale, is frequently exposed to inconvenience from the delay which may occur in obtaining infetment, enacts, that it shall be lawful for the Judges of the Court of Session, when pronouncing de-

cree of Adjudication, whether for debt, or in implement, or decree of sale, to grant warrant in terms, or as nearly as may be in terms, of Schedule K, annexed to the Act, for infesting the adjudger or purchaser, and his heirs and successors, in the lands and others adjudged, to be holden by them alternatively, by two several infeftments and manners of holding, one thereof to be holden of the party adjudged from, and his heirs, in free blench, for payment of a penny Scots in name of blench farm, at Whitsunday yearly, upon the ground of the lands, if asked only, and freeing and relieving the party adjudged from, and his heirs, of all feu duties and services exigible out of the lands, by their immediate lawful superiors thereof; and the other of the said infeftments to be holden from the party adjudged from, and his heirs, of and under their immediate lawful superiors, in the same manner that the party adjudged from, his predecessors and authors, held, or might have holden, the same, and that by confirmation.

Warrant to infest Adjudger may be contained in Decree of Adjudication.
Form of Warrant.

Alternative holding inferred.

In virtue of such decree of Adjudication, or decree of Sale, the adjudger or purchaser is entitled to complete his title, either according to the present practice, by obtaining a Charter of Adjudication, or of Sale, from the superior of the lands, and passing infeftment thereon, or where the person adjudged from is entered with his superior, or in a situation to charge such superior, under the powers contained in this Act, to grant entry by confirmation, by taking infeftment in virtue of the warrant contained in such decree, which infeftment may be in the form given in Schedule (L), annexed to the Act.

Adjudger may complete his title by Charter of Adjudication, or, in certain cases, by Infeftment on Decree of Adjudication.

Form of Infeftment.

The infeftment on the decree of Adjudication, or of Sale, is declared to be an effectual feudal investiture in the said lands, in terms of such decree, holding base of the party adjudged from, and his heirs, until confirmation thereof shall be granted by the immediate superior of the lands, or his successors, in the same manner, and to the same effect,

Effect of Infeftment on Decree.

as if the party adjudged from had granted a disposition of the lands to the adjudger or purchaser, in the terms of the decree of Adjudication or of Sale, with an obligation to infest *a me vel de me*, to be completed by confirmation, and a Precept of Sasine, and the adjudger or purchaser had been infest on such Precept; and the effect of the Charter of Confirmation of the Sasine, thus proceeding on such decree of Adjudication or decree of Sale, is declared to be to make the lands hold immediately of and under such superior.

Effect of
Charter.

Composition to Superior for entry. The right of the superior to the composition payable by an adjudger or purchaser, as due under the existing law, is reserved entire, and the adjudger or purchaser, by passing infestment on the decree of Adjudication or of Sale, in manner above mentioned, becomes indebted, in such composition, to the superior, and is bound to pay the same, upon the superior's tendering a Charter of Confirmation, whether such Charter shall be accepted or not, and the superior is entitled to recover payment of such composition as accords of law.

Questions of Bankruptcy, &c. Sasine duly recorded on such decree of Adjudication is declared, without prejudice to any other diligence or procedure, of itself sufficient to make the adjudication effectual in all questions of bankruptcy or diligence.

Where subinfeudation prohibited. Where the Charter, Contract, or other Deed, by which the Vassal's right is constituted, contains a prohibition against subinfeudation or alternative holding, such decree and sasine, notwithstanding any such prohibition, forms a valid feudal investiture in favour of such adjudger or purchaser, but without prejudice to the right of the superior to require such adjudger or purchaser to enter forthwith, as accords of law, and to deal with such adjudger or purchaser as with a Vassal unentered. § 19.

The particular circumstances under which infestment on a decree of Adjudication or of Sale may be effectually taken,

require the special notice of the Conveyancer,—the infetment being in terms of the Act (§ 19) incompetent, unless “ where the person adjudged from is entered with his Superior, or in a situation to charge such Superior under the powers” therein “contained to grant entry by Confirmation.”

CHAPTER IX.

JUDGMENTS OF COURT OF SESSION.

It is enacted by the Statute, that any Judgment pronounced by the Lord Ordinary, in virtue of this Act, shall be subject to review by a reclaiming note in ordinary form; but the Judgment of the Lord Ordinary, if not so brought under review, and the Judgment of either Division of the Court upon such reclaiming note, whether such Judgments shall have been pronounced in absence of the respondent or not, shall be final and conclusive, and not subject to review by appeal to the House of Lords, or by reduction, or in any other mode or form whatever; and it shall be competent to the Lord Ordinary, or to either Division of the Court, reviewing any Judgment of the Lord Ordinary, if it shall appear to him or them to be just in the whole circumstances of the case, to find and decern, in ordinary form, for the expenses of any proceedings under this Act against the petitioner or respondent personally, § 20.

CHAPTER X.

ACTS OF SEDERUNT.

It is declared lawful for the Court of Session to pass such Act or Acts of Sederunt as the Court may deem proper for carrying into effect the purposes of the Act. § 21.

46 ANALYSIS OF TRANSFERENCE OF LANDS ACT.

CHAPTER XI.

INTERPRETATION OF WORDS.

Words. The construction and meaning of the words of the Act are regulated by a special clause (§ 32), to which reference is made.

ANALYSIS

OF

BURGAGE TENURE ACT.

CHAPTER I.

PRELIMINARY.

THE object of this Statute is to introduce the same improvements, in the case of Lands held Burgage, as have been effected by the Transference of Lands Act, 10th and 11th, cap. 48, with respect to other Heritages, along with certain amendments peculiar to Burgage Tenure. General
Objects.

CHAPTER II.

FORM OF CONVEYANCES.

In all Dispositions and Conveyances, and other Deeds and Instruments necessary for the transmission of lands in Scotland held by the tenure of Burgage, it is declared lawful and competent to express certain clauses briefly, in place of the verbose manner hitherto in use, viz. :— Form of
Convey-
ances.

1. The clause declaring the term of entry thus :—“ With entry at the term of (*here specify the date of entry*).” Clauses.

2. The obligation to infest, thus :—“ And I oblige myself to infest the said (*here insert the name of the Disponee*)

Clauses. and his foresaids, to be holden of her Majesty in Free Burgage."

3. The Procuratory of Resignation, thus:—" And I hereby resign the said lands and others in favour of the said (*here insert the name of the Disponee*) and his foresaids, for new infeftment (*or for new liferent infeftment, or for new infeftment in liferent and fee respectively, as the case may be*)."

4. The obligation to free and relieve of Cess, Annuity, Ground-Annual, and other public, parochial, and local burdens, thus:—" And I bind myself to free and relieve the said (*here insert the name of the Disponee*) of all Cess, Annuity, Ground-Annual, and other public and parochial burdens."

5. The Assignment of Rents, thus:—" And I assign the Rents of the said lands."

6. The Assignment of Writs and Evidents, thus:—" And I also assign the Writs and Evidents, and have delivered the same according to Inventory."

7. The clause of Warrandice, thus:—" And I grant Warrandice as accords."

8. The clause of Registration, thus:—" And I consent to the Registration hereof for Preservation (*or for Preservation and Execution*)."

May be omitted, &c.

In the event of it being necessary to omit, vary, or qualify any one or more of the clauses as above set forth, this may be done, and the other clauses may be retained.

The Inductive and Dispositive clauses, and the Testing clause, remain unaltered from their present form. § 1, Schedule A.

Import of Clauses.

The following is declared to be the legal import of the clauses as above expressed, conform to the Act and relative Schedule.

1. The Obligation to infeft, to imply an obligation on the disponer to infeft the disponee, and his heirs and as-

signees, in the lands or other heritages conveyed, upon their own expenses, and that by resignation to be holden of her Majesty in free Burgage, for service of burgh used and wont.

2. The Clause of Resignation, to be equivalent to a Procuratory of Resignation in the terms now in use in regard to heritable property held burgage.

3. The obligation to free and relieve from Cess, &c., to import, unless specially qualified, an obligation to relieve of all Cess, Annuity, Ground Annual, and other public, parochial, and local burdens exigible from or on account of the subjects conveyed prior to the date of entry.

4. The Assignment of Rents to import, unless specially qualified, an assignment to the rents to become due for the possession following the term of entry, according to the legal and not the conventional terms, unless in the case of forehand rents, in which case it will import an assignment to the rents payable at the conventional terms subsequent to the date of entry.

5. The Assignment to Writs and Evidents to import, unless specially qualified, an absolute and unconditional assignment to such writs and evidents, and to all open procuratories therein contained, to which the disponent has right.

6. The Clause of Warrantice to imply absolute Warrantice as regards the lands, and writs and evidents, and Warrantice from fact and deed as regards the rents.

7. The Clause of Registration to import, unless specially qualified, a consent to Registration, and a Procuratory for Registration in the Books of Council and Session, or other Judges' Books competent, therein to remain for preservation, and if for execution, that letters of horning, and all other necessary execution shall pass thereon, upon a charge of six days, upon a decree to be interponed thereto. § 2.

Conditions
of Entail
and Real
Burdens.

Conditions of entail and real burdens affecting the lands need not be inserted in future investitures, but may be referred to, agreeably to Schedules B. and C. annexed to the Act. § 3 and 4.

CHAPTER III.

NEW FORM OF RESIGNATION AND INFECTMENT.

Resignation
in hands of
Magistrates
abolished.

As a further simplification of the Investiture in Burgage rights, the new Statute enacts, That it shall no longer be necessary towards obtaining infectment, upon a disposition or other deed of conveyance, or upon a decree of adjudication or of sale, that the party, or a procurator for the party, obtaining infectment shall appear before the Provost, or some one of the Bailies of the burgh in which the lands are situated, and resign the same into his hands as into the hands of Her Majesty, and for such Provost or Bailie to give sasine to such party or procurator, and that it shall not be necessary to proceed to the ground of the lands, or to the Council Chamber of the burgh, or to use any symbol of resignation or sasine.

New form
for obtain-
ing Sasine.

Resignation may be made and infectment obtained under the new Act, in burgage subjects, in the same manner as was provided by the Infectment Act, 8th and 9th Victoria, cap. 35, in regard to lands held feu or blench, simply by presenting to the Town-Clerk of the burgh, being a Notary Public, the disposition or other deed, or decree of adjudication or of sale, or other necessary warrants, and by the Town-Clerk subscribing and recording an Instrument of Sasine, or of Resignation and Sasine, which may be expressed in the form, or as nearly as may be, in the form of Schedule D. annexed to the Act, authenticated in the manner shewn in the Schedule, to which reference is made. § 5.

CHAPTER IV.

REGISTRATION OF INSTRUMENT.

Every Instrument of Sasine, or of Resignation and Sasine, is directed to be recorded in the manner heretofore ^{Registration of Instru-}ment. in use, with regard to Instruments of Resignation and Sasine in Burgage Property; and such Instruments being so recorded are declared to have the same effect in all re-^{Effect.}spects as if Resignation had been made and accepted, and Sasine had been given, and an Instrument of Sasine duly recorded according to the law and practice heretofore in use. § 6.

Every Instrument of Sasine, or of Resignation and Sa-^{Time.}sine, may be recorded at any time during the life of the party in whose favour the Instrument has been expedited; and the date of presentment and entry set forth on any such In-^{Date.}strument by the keeper of the Record, is to be taken to be the date of the Instrument of Sasine, or of Resignation and Sasine and Infestment.

In case of any error or defect in any such Instrument, it ^{New Instru-}is competent of new to make and record an Instrument ^{ment may be}of ^{Recorded.}Sasine, or of Resignation and Sasine, which shall have the effect from the date of the recording thereof, as if no previous Instrument had been made or recorded. § 7.

CHAPTER V.

GENERAL AND SPECIAL, AND GENERAL SPECIAL CHARGES,
ABOLISHED IN REFERENCE TO ACTIONS OF CONSTITUTION
AND ADJUDICATION.

The Statute enacts, that it shall no longer be competent ^{Charges}to use letters of general Charge, or special Charge, or ^{abolished.}

general special Charge, but that, in an Action of Constitution of an ancestor's debt or obligation against his unentered heir, the Citation on and execution of the Summons in such action, shall be held to imply and be equivalent to a general Charge, the *induciæ* of which shall expire with the *induciæ* of such Summons, and shall infer the like certification with such general Charge; and that it shall thereafter be competent to adopt, under such Summons, the same procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by letters of general Charge duly executed against such heir, according to the law and practice heretofore in use, which Decree shall be a valid Decree of Constitution; and that in an Action of Adjudication against such heir following on such Decree of Constitution, or in an Action of Adjudication against an unentered heir for his own debt or obligation, the Citation on and execution of the Summons of Adjudication shall be held to imply and be equivalent to a special Charge, or general special Charge, as the circumstances may require, the *induciæ* of which Charge shall expire with the *induciæ* of such Summons, and shall infer the like certification with such special Charge, or general special Charge, as the case may be; and that it shall thereafter be competent to adopt, under such Summons, the same procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by letters of special Charge, or general special Charge, as the case may be, duly executed against such heir according to the law and practice heretofore in use, which Decree shall be a valid Decree of Adjudication; and that, in an Action of Constitution and Adjudication combined in the same Summons against an unentered heir, it shall be competent to adopt the same procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by

Summons of
Constitu-
tion equiva-
lent to gene-
ral charge.

Summons of
Adjudica-
tion equiva-
lent to gene-
ral charge,
and general
special
charge.

letters of general Charge, duly executed against such heir according to the law and practice heretofore in use; and that, in such combined Action of Constitution and Adjudication, it shall be competent to pronounce Decree of Constitution and Adjudication in one and the same Interlocutor, and to extract the same in one and the same extract, which Decree shall be a valid Decree of Constitution and Adjudication, anything in an Act of the Parliament of Scotland, passed in the year one thousand five hundred and forty, and in another Act of the Parliament of Scotland, passed in the year one thousand six hundred and twenty-one, or in any other Act or Acts of Parliament, or any law or practice, to the contrary, notwithstanding, the said Acts being repealed to the extent of making these enactments operative, but no farther. § 8.

Letters of General Charge required by the Statute 1695, cap. 41, and Letters of Special Charge required by the Act 1474, cap. 57, do not appear superseded by the new Statute, as already mentioned, *ante*, p. 42.

CHAPTER VI.

ADJUDICATIONS.

The Bill heretofore necessary to be presented in the Bill-Chamber for a Summons of Adjudication, or of Ranking and Sale, is abolished. § 9.

The Summons of Adjudication is further simplified and abridged, by the Statute enacting that it shall no longer be necessary to libel or conclude for special Adjudication; and that it shall be lawful to libel, conclude, and decern for general Adjudication, without such alternative. § 10.

CHAPTER VII.

ACTS OF SEDERUNT.

Acts of Sederunt. The Court of Session are authorised to pass such Acts of Sederunt as the Court may deem proper, for carrying into effect the purposes of this Act. § 11.

CHAPTER VIII.

INTERPRETATION OF WORDS.

Words. The interpretation of the words in the Statute is regulated by a special Clause, to which reference is made. § 12.

ANALYSIS
OF
HERITABLE SECURITIES FOR DEBT ACT,
1847.

CHAPTER I.

PRELIMINARY.

The effect of this Act, which applies to subjects held <sup>General ob-
jects.</sup> Burgage as well as Feu or Blench, is to dispense with Instruments of Sasine on Bonds and Dispositions in Security, and to authorise the registration of the Deed itself in the Register of Sasines in lieu of any infeftment.

Most of the clauses at present introduced into Bonds and Dispositions in Security are either dispensed with or greatly abridged by the Act, and a brief form given in a Schedule. § 1.

From the expressions used in the first section of the Statute, and from the relative Schedule, it appears doubtful whether Heritable Securities constituted by other deeds than what are usually known and denominated as Bonds and Dispositions in Security fall under its operation.

The establishment of Heritable Securities in the forms at present in use is left competent. § 13.

CHAPTER II.

WHO MAY GRANT A BOND AND DISPOSITION IN SECURITY
UNDER THE ACT.

Who may
grant secu-
rity.

The granter of the security must be himself infest and otherwise vested with a complete feudal title to the lands, in like manner as is requisite for the granter of a Bond and Disposition in Security under the existing form. It would rather appear, however, that a title subsequently completed in the person of the granter would accresce to and validate the security. § 1.

CHAPTER III.

FORM OF THE BOND AND DISPOSITION IN SECURITY.

A form of the much abridged Deed permitted by the Statute is given in a Schedule thereto annexed, which will be found in the Appendix, and to which reference is made.

The wonted Obligation to infest, Procuratory of Resignation, and Precept of Sasine, are altogether abolished.

Narrative.

The narrative in the prescribed form is "I, A. B. (*here name and design the granter*), grant me to have instantly borrowed and received from C. D. (*here name and design the creditor*) the sum of (*insert the sum*) sterling."

This would not prevent the receipt of the money at a former period being expressed in the narrative, should such be the case, the Statute declaring that the deed may be granted in the form, or as nearly as may be in the form, of the Schedule, and it may be necessary also to vary the narrative, by stating a plurality of granters and of creditors, or some special character in which they may be concerned in the transactions.

The obligation to repay prescribed by the Schedule is in these terms: "Which sum I bind myself and my heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said C. D., or his heirs and assignees whomsoever, at the term of (*here insert the date and place of payment*), with a fifth part more of liquidate penalty in case of failure, and the legal interest of the said principal sum from the date hereof to the said term of payment, and half-yearly, termly, and proportionally thereafter during the not-payment of the same, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said interest at the term of next to come, for the interest due preceding that date, and the next term's payment thereof at following, and so forth, half-yearly, termly, and proportionally thereafter during the not-payment of the principal sum, with a fifth part more of the interest due at each term of liquidate penalty, in case of failure in the punctual payment thereof."

It will be observed that, contrary to former practice, a *place* of payment is specified. The proper Bank for consignment upon redemption, or in the event of a sale, is regulated by the place of payment.

This clause may, in like manner, be varied according to the date the money was actually advanced, the agreed on terms of payment of the interest being other than Whitsunday and Martinmas, and from other circumstances.

The Conveyance of the Lands in Security is appointed by the Schedule to be thus expressed: "And in security of the personal obligation before written, I dispoⁿe to and in favour of the said C. D., and his foresaids, heritably but redeemably, as aftermentioned, yet irredeemably in the event of a sale by virtue hereof, all and whole (*here describe the lands or other heritages*), and that in real security

Obligation
to Repay.

Conveyance
of Lands in
Security.

to the said C. D. and his foresaids of the whole sums of money above written, principal, interest, and penalties."

**Assignment
of Rents.**

The Assignment to the Rents is directed by the Schedule to be in these words: "And I assign the rents." This is by the Statute (§ 2) declared to import an Assignment to Rents, from and after the term from which interest on the sum in the bond commences to run, in the fuller form now generally in use, including therein a power to the creditor, on default in payment, to enter into possession of the lands disposed in security, and uplift the rents thereof, subject to accounting to the debtor for any balance of rents actually recovered beyond what is necessary for payment of the creditor.

**Assignment
to Writs.**

The Assignment to the Writs is directed by the Schedule to be in these words: "And I Assign the Writs." This clause is by the Statute (§ 2) held to import an Assignment to writs and evidents, to the same effect as in the fuller form now in use in a Bond and Disposition in security, with Power of Sale.

**Clause of
Warrandice.**

The Clause of Warrandice falls to be in these words: "And I grant Warrandice." This, by the Statute (§ 2), is held to import absolute Warrandice as regards the lands and title deeds thereof, and Warrandice from fact and deed as regards the rents.

Where, therefore, the circumstances of the case require the Warrandice to be limited, the clause must be varied accordingly. For example, in a security over a superiority, the feu rights would require to be excepted from the Warrandice.

**Clause of
Redemption.**

The Clause of Redemption is appointed to be thus expressed: "And I reserve power of Redemption."

This, by the 3d section of the Statute, is declared to be in all respects as valid, effective, and operative, as if it had been specially provided and declared in the Bond and Dis-

position in security, that the lands and others thereby disposed should be redeemable by the granter, his heirs and successors, from the grantee, his heirs and successors, at the term and place of payment, or at any term of Whitsunday or Martinmas thereafter, upon premonition of three months, to be made by the granter or his foresaids to the grantee or his foresaids personally, or at their dwelling-places, if within Scotland, and if furth thereof at the time, then at the office of the Keeper of the Record of Edictal Citations within the General Register House, Edinburgh, in presence of a Notary Public and Witnesses, and that by payment to them of the whole principal sum payable under the Bond and Disposition in security, interest due thereon, and liquidated expenses, and termly failures corresponding thereto, if incurred; and, in case of their absence or refusal to receive the same, by consignation thereof in one or other of the Banks in Scotland, incorporated by Act of Parliament or Royal Charter, having an office or branch at the place of payment, to be made furthcoming on the peril of the Consigner, the place of redemption to be within the office of such Bank or branch thereof.

The Obligation on the granter for Expenses is appointed to be thus expressed: "And I oblige myself for the ex-^{Obligation for Ex-}penses of assigning and discharging this security."

This, by the 3d section of the Statute, is declared equivalent to providing that any discharge and renunciation, disposition, and assignation, or other deed necessary to be granted by the grantee or his foresaids, upon the granter or his foresaids making payment and redeeming as aforesaid, and also the recording thereof, shall always be at the expense of the granter and his foresaids.

The Power of Sale is directed to be thus expressed: ^{Power of Sale.} "And on default in payment I grant power of sale."

This is declared, by the 3d section of the Statute, to be

Power of
Sale.

the same as if it had been provided in the Bond and Disposition in security, that if the granter or his foresaids should fail to make payment of the sums that should be due by the personal obligation contained in the said Bond and Disposition in security, within three months after a demand of payment intimated to the granter or his foresaids, whether of full age or in pupillarity or minority, or although subject to any legal incapacity personally, or at their dwelling places, if within Scotland, or if furth thereof, at the office of the Keeper of the Record of Edictal Citations above mentioned, by a Notary Public and Witnesses, then and in that case it should be lawful to and in the power of the grantee or his foresaids, immediately after the expiration of the said three months, and without any other intimation or process at law, to sell and dispose in whole or in lots of the said lands and others by public roup, at Edinburgh or Glasgow, or at the head burgh of the county within which the said lands and others, or the chief part thereof, are situated, or at the burgh or town sending or contributing to send a Member to Parliament, which, whether within or without the county, shall be nearest to such lands, or the chief part thereof, on previous advertisement, stating the time and place of sale, and published once weekly, for at least six weeks subsequent to the expiry of the said three months, in any Newspaper published in Edinburgh, and also in any Newspaper published in such county, or, if there be no Newspaper published in such county, then in any Newspaper published in the next or a neighbouring county, the grantee being always bound, upon payment of the price, to hold count and reckoning with the granter or his foresaids for the same, after deduction of the principal sum secured, interest due thereon, and liquidate penalties corresponding to both which may be incurred, and all expenses attending the sale; and for that end to enter into articles of roup, grant Dispositions containing all usual and

HERITABLE SECURITIES FOR DEBT ACT, 1847. 61

necessary clauses, and in particular, a clause binding the granter of the said Bond and Disposition in security, and his heirs in absolute warrandice of such Dispositions, and obliging him and them to corroborate and confirm the same, and to grant all other deeds and securities requisite and necessary by the laws of Scotland for rendering such sale or sales effectual, in the same manner and as amply in every respect as the granter could do himself; and as if it had been thereby further provided and declared that the said proceedings should all be valid and effectual, whether the debtor in the said Bond and Disposition in security for the time should be of full age or in pupillarity or minority, or although subject to any legal incapacity, and that such sale or sales should be equally good to the purchaser or purchasers, as if the granter himself had made them; and also that in carrying such sale or sales into execution, it should be lawful to the grantee and his foresaids to prorogate and adjourn the day of sale from time to time as they should think proper, previous advertisement of such adjournment being given in the Newspapers above mentioned, once weekly for at least three weeks; and as if the granter had bound and obliged himself and his foresaids to ratify, approve of, and confirm any sale or sales that should be made in consequence thereof, and to grant absolute and irredeemable Dispositions of the lands and others so to be sold to the purchaser or purchasers, their heirs and assignees, and to execute and deliver all other deeds and writings necessary for rendering their rights complete.

The Bank in which the surplus price, if any, is to be consigned, must be specified in the Articles of Roup. § 8.

The Clause of Registration is directed to be thus expressed: "And I consent to registration for preservation and execution, and also to registration in the general or particular (or burgh, *as the case may be*) Register of Sasines."

This is declared, by the 2d section of the Statute, to im-

port a consent to registration, and a procuratory for registration, in the Books of Council and Session, or other Judges' Books competent, for preservation, and that letters of horning on six days' charge, and all other necessary execution may pass on a decree to be interponed thereto, and to entitle the creditor to register the bond either in the general Register of Sasines or in the particular or burgh Register, as the tenure of the lands embraced in the security may require.

Reference to
Conditions
in Granter's
Titles.

If the lands conveyed in security are held under any conditions, reservations, restrictions, and provisions, the following is appointed to be inserted immediately after the description of the lands: " But with and under the whole conditions, reservations, restrictions, and provisions specified and contained in an Instrument of Sasine, (*or Resignation ad remanentiam*), in the said lands and others in favour of E.F., recorded in the (*here mention the register in which the Sasine is recorded*), upon the day of in the year ." Note to Schedule.

Conditions
in Titles
may be re-
ferred to.

The Statute declares, § 4, that in Bonds and Dispositions in Security to be granted in terms of the Act, it shall be lawful and competent, notwithstanding any declaration to the contrary, contained, or to be contained, in the rights and title deeds of the lands embraced by the Security, instead of inserting at full length any conditions, reservations, restrictions, and provisions under which such lands and other heritages are held, to make reference to the same as set forth at full length in the recorded instrument, whether of Sasine or Resignation *ad remanentiam*, in which the same were at first inserted, or any other recorded Instrument of Sasine, forming a part of the investiture of the granter of such security in the said lands, and which shall contain such conditions, reservations, restrictions, and provisions at full length, such recorded Instrument being described by the name of the person in whose favour the same was expedite, the Register of Sasines in which the same is recorded,

and the date of recording the same; and such reference shall be, to all intents and in all questions whatever, whether with the original disponer or the superior, or any other party, as valid and effectual as if the same had been inserted at length exactly as they may be expressed in such Instrument referred to.

The Deed must be executed, and conclude with a Testing ^{Testing} Clause.
Clause, agreeably to former law and usage.

CHAPTER IV.

COMPLETION OF CREDITOR'S TITLE.

The party in whose favour the security is granted in the form above described, may complete his title by registra-^{Completion of Security by Registration of Deed.} tion of the Bond and Disposition in Security in the Register of Sasines of the burgh in which the lands are situated, if the tenure by which they are held is burgage; and in the case of other tenures, by registration of the Deed either in the General Register of Sasines at Edinburgh, or in the particular Register of Sasines applicable to the lands contained in the security,—and such registration is by the Statute, § 1, declared to be as effectual and operative, to ^{Effect.} all intents and purposes, as if such Bond and Disposition in Security had contained, in the case of subjects held by the ordinary tenures, an obligation to infest *a me vel de me*, Procuratory of Resignation, and Precept of Sasine; and in the case of burgage subjects, an Obligation to Infest *more burgi*, and a Procuratory of Resignation, all in the words and form now in use, and as if Sasine, or Resignation and Sasine, as the case may be, had been duly made, accepted, and given thereon, in favour of the original creditor, and an Instrument of Sasine, or of Resignation and Sasine, as the case may be, had been duly recorded of the date of the registration of the said Bond and Disposition in Security as aforesaid.

CHAPTER V.

MODE AND TIME OF REGISTRATION OF BONDS AND DISPOSITIONS IN SECURITY IN REGISTER OF SASINES.

Mode of Registration. The Statute, § 5, enacts that Bonds and Dispositions in Security presented for registration in the Register of Sasines in pursuance of this Act, shall be forthwith shortly registered in the Minute books of the said Register in common form, and shall with all due despatch be fully registered in the Register books, and thereafter re-delivered to the parties, with certificates of due registration thereon, which shall be probative of such registration, such certificates specifying the date of presentation, and the book and folio in which the engrossment has been made, and being subscribed by the Keeper of the Register; and the date of entry in the Minute book shall be held to be the date of registration; and extracts of writings registered in pursuance of this Act shall make faith in all cases, in like manner as the writings registered, except where the writings so registered are offered to be improven.

Where a warrant of charge and other execution are wanted on the Bond, it must be thereafter registered in the Books of Council and Session, or other Judges' Books competent; an expense which might have been saved, by authorising the Keepers of the Registers of Sasines to issue such warrants along with their Certificates of Registration.

Time of Registration. Bonds and Dispositions in security to be granted as aforesaid, may be registered in the Register of Sasines at any time during the lifetime of the Grantee, and shall in competition be preferred according to the date of the registration thereof; Provided always, that if such Bond and

Effect of Bond unregistered. Disposition in security has not been so registered in the lifetime of the Grantee, such Bond and Disposition in se-

curity shall be as full and sufficient Warrant of Sasine in favour of the party having right to the Bond by Service, Adjudication, or otherwise, as if it had been a Bond and Disposition, including Precept of Sasine and other clauses in the ordinary form now in use ; and infeftments being passed upon the same in the form, or as nearly as may be in the form, prescribed by the Act 8th and 9th Victoria, cap. 35, intituled *An Act to simplify the form, and diminish the expense of obtaining infeftment in Heritable Property in Scotland*, and duly recorded, shall be, to all intents and purposes, good and valid infeftment in favour of the party so infeft. § 6.

CHAPTER VI.

SALE OF LANDS BY CREDITOR.

How the power of sale may be exercised has been already explained, *supra*, p. 59, *et seq.*

Any sale duly carried through in terms of the Act is ^{Sale to be} declared as valid and effectual to the purchaser as if made ^{valid to} ^{Purchaser.} by the granter of the security himself, and that whether the granter should die before or after such sale, and without the necessity of confirmation by him or his heirs, and notwithstanding that the party debtor in the security and in right of the lands at the time shall be in pupillarity or minority, or subject to any legal incapacity: Provided always that nothing contained in the Act shall be held to affect or prejudice the obligation of the granter and his heirs to execute or the right of the creditor or purchaser to require the granter and his heirs to execute any deed or deeds which, independently of that enactment, would at common law be necessary for rendering the Sale effectual, or otherwise completing in due form the titles of such purchaser. § 7.

The creditor, upon receipt of the price, is declared bound

Creditors
selling to
count and
reckon for
the surplus
of the price,
and to con-
sign the same
in Bank.

to hold count and reckoning therefor with the debtor and postponed creditor, if any such there be, and their heirs and assignees, or with any other party having interest, and to consign the surplus, which may remain after deducting the debt secured, with the interest due thereon, and penalties incurred, and whole expenses attending such sale, and after paying all previous incumbrances, and the expense of discharging the same, in one or other of the Banks in Scotland incorporated by Act of Parliament or Royal Charter, having an office or branch at the place of payment, or in a branch of any such bank, in the joint names of the seller and the purchaser for behoof of the party or parties having the best right thereto; and the particular Bank in which such consignment is to be made shall be specified in the Articles of Roup. § 8.

On Sale and
Consigna-
tion of sur-
plus price,
lands to be
disencum-
bered of the
security and
diligence of
the seller,
and of all
posterior
Creditors.

Upon a sale being carried through in terms of the Act, and upon consignment of the surplus of the price, if any be, it is provided, that the disposition by the creditor to the purchaser shall have the effect of completely disencumbering the lands and others sold, of all securities and diligences posterior to the security of such creditor, as well as of the security and diligence of such creditor himself. § 9.

This effect of a sale by an heritable creditor was formerly obtained only in the event of the estates of the debtor being sequestrated under the Act 2d and 3d Victoria, cap. 41, and provided the lands were sold by the Trustee with consent of the Commissioners and such heritable creditor.

CHAPTER VII.

TRANSMISSION AND EXTINCTION OF HERITABLE SECURITIES.

The Statute enacts, that all the provisions, condi-

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tions, and enactments, contained in the Act 8th and 9th Victoria, cap. 31, intituled "An Act to facilitate the transmission and extinction of Heritable Securities for Debt in Scotland," shall be held to apply to the transmission and extinction of heritable securities for debt in Scotland, constituted in terms of this Act: Provided always, that where in the assignations, writs of acknowledgment, discharges, or other instruments, granted under the said recited Act, reference is thereby directed to be made to the Instrument of Sasine on any bond and disposition in security, it shall be sufficient in the case of a bond and disposition in security granted under authority of this Act, to make reference to the date of recording such bond and disposition in security itself in the Register of Sasines. § 10.

The Act 8th and 9th Vict. cap. 31, to apply to the transmission and extinction of securities granted under this Act.

It is to be regretted that the errors and imperfections, well known to exist in the Statute referred to, have not been amended in the present Act.

CHAPTER VIII.

FEES.

The Fees of the existing Town Clerks in Royal Burghs and of other Keepers of Registers of Sasines are regulated by the new Statute (§ 11.), and power reserved to the Court of Session to pass Acts of Sederunt for regulating the Fees to be paid to the several Keepers. § 12.

Fees.

CHAPTER IX.

ACTS OF SEDERUNT.

The Court of Session is authorised to pass such Acts of

Acts of Sederunt.

68 HERITABLE SECURITIES FOR DEBT ACT, 1847.

Sederunt as the said Court may deem proper for regulating the Registers of Sasines, and the Fees to be paid to the several Keepers thereof, for registrations in virtue of this Act, and generally for carrying out the purposes of this Act. § 12.

CHAPTER X.

INTERPRETATION OF ACT.

Words. The construction and meaning of the words in the Act are regulated by a special clause (§ 14), which requires particular attention.

ANALYSIS

OF

CROWN CHARTERS ACT.

CHAPTER I.

PRELIMINARY.

The scope of this Statute is to abolish the practice of pre-General
senting signatures in Exchequer, and issuing Precepts to Objects.
Chancery, preliminarily to granting Charters from the Crown
and Prince of Scotland, and to allow Charters from the
Crown and Prince, in favour of singular successors, and Pre-
cepts in favour of heirs, to be obtained without the tedious
and expensive formalities hitherto required, and very much
in the same manner that Charters and Precepts are at pre-
sent granted by subjects superior.

The abridgement of Charters and Precepts by the establish-
ment of Forms free from surplusage, and the substitution
of the English for the Latin language in Crown Charters,
Precepts, and Instruments of Sasine thereon, are also de-
sirable improvements effected by the Act.

CHAPTER II.

MODE OF OBTAINING ENTRY WITH THE CROWN OR PRINCE BY CHARTER.

A Note, in the following terms, must be lodged by a Note for
Writer to the Signet, on behalf of the applicant for the entry, Charter.

in the office of the Presenter of Signatures in Exchequer :—

“Note for A.B. (*insert Name and Designation*). The said A.B. humbly prays that a Charter (*or Precept, or other Deed, as the case may be*) may be granted by Her Majesty (*or the Prince and Steward of Scotland as the case may be*), in terms of the Draft herewith lodged and marked as relative hereto.

(Signed) “C. D. (W.S.), Agent for the said A. B.”

Draft Charter must be lodged.

Along with the Note, a Draft of the proposed Charter, prepared by the applicant's agent, being a Writer to the Signet, with his signature indorsed thereon, must be lodged in the office of the Presenter of Signatures.

Date.

The date of lodging such Note must be marked thereon by the Presenter of Signatures, or his clerk.

Previous Titles must be lodged.

Along with the Note and Draft Charter, there must be lodged the last Crown Charter or Prince's Charter, or Retour or Decree of Service, and Precept from Chancery of the Lands, and all the Title Deeds of the Lands subsequent thereto, together with evidence of the valued rent when necessary, and an inventory and brief of the titles according to the present practice. § 2. Schedule A.

Draft Charter to be revised by Presenter of Signatures.

The Draft Charter so lodged, must be forthwith revised by the Presenter of Signatures, who shall require the attendance of the agent of the person applying for the Charter for the purpose of receiving his explanations ; and the Presenter of Signatures must thereafter proceed with the revision of the said Draft, making such alterations and corrections as are necessary, and after his final revisal of such Draft, must authenticate each page thereof, and the several alterations and corrections thereon, if any, with his initials, and mark on such Draft that the same has been revised by him, and also the date when such revisal was completed. § 3.

If it shall appear that any mistake has occurred in the

terms of the last Charter, or Retour, or Decree of Service, ^{Rectification of Mistakes in former Titles.} to the prejudice of the Crown or Prince, the person applying for the Charter must farther, on requisition made to him or his agent to that effect, by order of the Presenter of Signatures, lodge the prior Title Deeds of the Lands, and any other Title Deeds of and concerning the same, in so far as such Title Deeds may be in his possession, or at his command, and in so far as the same may be necessary for the due revisal of the Draft on behalf of her Majesty or the Prince, and the rectification of such mistake, which may be rectified accordingly.

On the other hand, if the Vassal allege any mistake to have occurred in the terms of the last Charter, or Retour, or Decree of Service, to his prejudice, the person applying for the Charter shall be entitled, without such requisition, to produce the prior Titles of the said Lands, and any other Title Deeds, or other Deeds of and concerning the same, in so far as these may be necessary for the due revisal of the Draft, and the rectification of such mistake, which may be rectified accordingly.

No such rectification shall, in either case, be allowed, nor the Draft be held as finally revised or authenticated as such, until the same shall have been reported by the Presenter of Signatures to, and approved of by the Judges performing the duties of the Court of Exchequer, in terms of the Act 2d and 3d Victoria, cap. 36, intituled, "An Act to regulate the duties to be performed by the Judges in the Supreme Courts of Scotland, and to increase the salaries of certain of the said Judges," or by one of the said Judges.

§ 4.

Reference may be made by the Presenter of Signatures, ^{Record may be referred to in place of principal Deeds, or Charter, or Retour.} or the applicant for the Charter, to the Register of the Great Seal, or to the Register of Retours, or Decrees of Service, in the event of the principal Writ not being producible; and the Lord Lord Clerk Register is enjoined to

make such regulation as will insure the exhibition of the Record, on the joint application of the person applying for the entry, and of the Presenter of Signatures. § 5.

Crown
Duties.

The amount of composition or other duties due to the Crown or Prince must be marked on the draft, and certified by the Auditor of Exchequer and Presenter of Signatures. No charge is to be added to the composition for the expense of collecting the duties. § 6.

Inspection,
&c. of Draft
Charter.

The revised draft will be retained in the office of the Presenter of Signatures, and be there open to the inspection of the party applying for the Charter, or his Agent, and a copy thereof must be furnished on demand. § 8.

Draft Char-
ter, if ap-
proved of, to
be docqueted
and trans-
mitted to
Chancery.

Where no objections are stated to the Draft as revised by the Presenter of Signatures, a Docquet signed by the Agent for the party applying for the Charter, and the Presenter of Signatures, with the date of their signature, must be put on the draft, certifying that the same is approved. The draft so docqueted must, without being given up to the party applying for the Charter or his Agent, be officially transmitted by the Presenter of Signatures to the office of Director of Chancery, and shall form a valid and sufficient warrant for the immediate preparation of the Charter in Chancery, in terms of the draft. § 9.

Charters
may be
obtained at
any time of
the year.

The Charter may be applied for, the Draft revised and approved of, and the Charter prepared and delivered, at any period of the year, without regard to term time in the Court of Exchequer. § 10.

CHAPTER III.

WHERE OBJECTIONS OCCUR TO THE DRAFT CHARTER OR TITLES PRODUCED.

The person applying for the Charter, if dissatisfied with

the draft as revised by the Presenter of Signatures, may state objections thereto, or against the amount of duties and composition thereon marked as payable.

Such objections must be set forth in a short written Note of Objections, without argument, subscribed by the agent of the Objector, and lodged in the Office of Presenter of Signatures, and the date of lodging such Note must be marked thereon by him or his clerk. § 11.

The Note of Objections, with the whole other proceedings, must be laid before the Judges officiating in Exchequer, or some one of them, who shall hear the person objecting by himself, his counsel, or his agent, being a Writer to the Signet, and shall also hear any report or statement by the Presenter of Signatures.

Wherever it shall appear to the said Judges or Judge, that the Objections should to any extent receive effect, they or he will cause such alterations and corrections as appear to them or him proper, either with reference to the terms of the Draft Charter, or to the amount of duties or other payments marked thereon as payable, to be made on such draft, or to be expressed in a separate paper marked as relative thereto, and will authenticate such draft or relative paper with their or his signature.

The said Judges or Judge will at the same time pronounce a Judgment or Deliverance, to be written on the Note of Objections, appointing the Charter, as so altered and corrected, to be prepared and executed, and the Judgment or Deliverance so pronounced shall form a valid and sufficient warrant for the preparation in Chancery of the Charter as altered and corrected. § 12.

Wherever the said Judges or Judge shall be of opinion that the Objections should not to any extent receive effect, they or he will pronounce a Judgment, to be written on the Note, repelling the Objections, and the Judgment or Deliverance so pronounced shall form a valid and sufficient

warrant for the preparation in Chancery of the Charter as revised by the Presenter of Signatures. § 13.

Where Presenter of Signatures refuses to revise Draft Charter.

Wherever the Presenter of Signatures is of opinion that the person applying for the Charter has not produced a title sufficient to shew that he has right to obtain the same, the Presenter of Signatures shall mark on the draft that the same is refused for want of sufficient production of titles, adding thereto his signature and the date of affixing the same; and his clerk shall intimate such refusal to the agent for the party, and shall on demand return the draft to such agent.

Note of Objections may be lodged.

Where a Charter is refused by the Presenter of Signatures, the applicant may bring the refusal under the review of the Judges or Judge in Exchequer, by a Note of Objections lodged in the office of the Presenter of Signatures; and the said Judges or Judge shall, after considering such note, and hearing parties thereon in manner above mentioned, sustain or repel the objection, or pronounce such judgment thereon as shall be just.

Remit.

If the said Judges or Judge shall be of opinion that a sufficient title has been shewn to authorise the Charter being granted, they or he will in that case remit to the Presenter of Signatures to proceed with the revisal of the draft. § 14.

CHAPTER IV.

FORM OF CHARTER.

Form of Charter.

All Crown Charters, and Charters by or on behalf of the Prince and Steward of Scotland, if the same be Charters of Resignation, may be in the form, as nearly as the case will admit, given in Schedule C., No. 1., annexed to the Act, and, if the same be Charters of Confirmation, may be in

one or other of the forms, or as nearly as the case will admit, given in the said Schedule C., Nos. 2 and 3, and, if the same be Charters of any other denomination or nature, they may be in forms as nearly approaching as may be to the examples given in said Schedule C.

Such Charters, when granted in these forms, or as nearly as may be in these forms, shall have the same force and legal effect in all respects as if the same had been granted in the forms now in use, and shall be read and construed as largely and beneficially in all respects for the holders thereof as if the same had been expressed in, and had contained the whole terms and words which are now used, according to the present practice, in granting such Charters. § 24.

In every case in which a Charter of Resignation by Her Majesty or the Prince or Steward of Scotland is applied for, it shall not be necessary to go through any form or ceremony of Resignation, but in all cases Resignation shall be held to be duly made and completed in terms of the Procuratory of Resignation by the ingiving of the note applying for the Charter, and as of the date of such ingiving ; and the Charter of Resignation shall set forth that Resignation was made of the date of applying for the same, without the necessity of specially setting forth such date, and shall otherwise deduce the titles according to law ; and every such Charter of Resignation shall be as valid and effectual, and form an equally sufficient warrant for Infeftment passing thereon, as any Charter of Resignation heretofore granted by Her Majesty or the Prince, any law or usage to the contrary notwithstanding. § 17.

To save unnecessary repetition and expense, this Statute, in like manner as the Service of Heirs, Transference of Lands, and Burgage Tenure Acts, provides that in Charters from the Crown or Prince, conditions of Entail may be therein referred to as already in the Register of Entails or in the Register of Sasines, and that real burdens or condi-

Ceremony of
Resignation
abolished.

Conditions
of Entail
and Real
Burdens
may be re-
ferred to in
Charter.

Form. tions, or limitations appointed to be fully inserted in the future investitures, may be referred to in the Charter as already in the Register of Entails or of Sasines. The form in which such references may be made is pointed out by Schedule C. annexed to the Act. §§ 26, 27.

CHAPTER V.

COMPLETION AND EFFECT OF CHARTERS FROM THE CROWN OR PRINCE.

Charters after revision to be engrossed and sealed in Chancery, and delivered to Party. As soon as the Draft Charter has been docqueted as revised and approved in manner above mentioned by the Presenter of Signatures; or, in case of objections being stated, as soon as the same shall have been disposed of by the Judges or Judge in Exchequer, it is lawful immediately thereafter to have the Charter engrossed in the Office of Chancery, in terms of the draft, as finally adjusted and officially transmitted to the Director of Chancery; and the Charter shall have the Seal appointed by the Treaty of Union to be kept and used in Scotland, in place of the Great Seal thereof, formerly in use affixed thereto, or the Seal of the Prince, if the Charter be of lands holden of the Prince, and a separate Seal be then in use for such Charters, and shall be recorded in Chancery, and thereafter delivered to the person applying for the same, or his agent, in like manner, in all respects, and on payment of the same fees and charges, as at present used, and observed, and payable.

Date. The date of sealing is in all cases to be held and expressed to be the date of the Charter.

Crown Duties. Before delivery of the Charter, payment must be made to the officers entitled to receive the same, of the amount of duties and composition payable to the Crown or Prince; and a Record thereof is appointed to be kept in Chan-

cery, so as to form a charge against the officer or other person appointed to receive the same. § 15.

The Charter engrossed, sealed, recorded, and delivered as aforesaid, is declared to be in all respects as valid and effectual, and to form an equally sufficient warrant for Infektment passing thereon, as any Charter of the same description hitherto in use to be granted by Her Majesty or the Prince and Steward of Scotland, notwithstanding that the same has not followed on any signature presented and passed in Exchequer, or Precept directed thereon, any law or usage heretofore existing to the contrary notwithstanding. § 16.

The lodging of a Draft of a proposed Charter, together with the short Note applying for the Charter in terms of the Schedule A. annexed to the Act, is declared, in competition of Diligence and all other cases, equivalent to the presenting of a signature in Exchequer; and recording a copy of such Note, and an Abstract of such draft Charter, in the Register of Abbreviates of Adjudications, shall be deemed and held to be equivalent to recording in the said Register an abstract of such signature. § 23.

Effect of
Charter.

Effect of
Note for
Charter, &c.
in Competi-
tion.

Copy Note,
and Ab-
stract of
Charter to
be recorded
in Register
of Adjudica-
tions, in
place of Ab-
stract of
Signature
formerly in
use.

CHAPTER VI.

PRECEPTS FROM CHANCERY TO HEIRS.

Any Person who has obtained himself specially served as Heir to a deceased ancestor, or who has obtained decree of special service, wishing to obtain a Precept from Chancery for infektting himself as such heir, must lodge in the office of the Presenter of Signatures the retour or decree of his special service, and a draft of the proposed Precept, prepared by his agent, being a Writer to the Signet.

Draft Pre-
cept to be
lodged.

The Precept must be in the form, or as nearly as the Form.

case will admit, given in a Schedule (B.), annexed to the Act.

Note and
prior titles
also to be
lodged.

A note praying for the Precept, framed in terms of Schedule A. annexed to the Act, along with the last Charter or Charters, or retour or decree of service, and other titles of the lands subsequent to the last entry, must at the same time be lodged with the Presenter of Signatures.

Revisal of
Precept.

The draft Precept will be revised by the Presenter of Signatures on behalf of Her Majesty or the Prince and Steward of Scotland, in the manner before explained, Chapter II., in reference to drafts of Charters, and all the provisions before mentioned with regard to drafts of Charters from Her Majesty or the Prince are applicable to drafts of Precepts. The draft of the Precept, when docquetted as revised and approved of by the Presenter of Signatures, or, in the case of objections, the Judgment or Deliverance of the Judges or Judge in Exchequer, when officially transmitted to the office of the Director of Chancery, forms a valid and sufficient warrant for the preparation in Chancery of the Precept, in terms of the draft, as finally corrected and approved; and the same shall be forthwith engrossed in the office of Chancery, and after being recorded in the "Record of Precepts" established by the Act, as hereinafter mentioned, shall be delivered to the Person applying for the Precept in like manner, and on payment of the same fees and charges, as at present used and payable.

To be en-
grossed and
recorded,
and deliver-
ed to party.

Effect of Pre-
cept when
completed.

The Precept so engrossed and delivered is declared to be in all respects as valid and effectual, and to form an equally sufficient Warrant for Infestment passing thereon, as any the like Precept issued from Chancery according to the mode hitherto in use.

Duties, &c.,
must be
paid.

Before the Precept is delivered, payment must be made of the amount of duties and composition payable to the Crown or Prince. § 18.

Precept may
be issued to

Precepts from Chancery hitherto proceeded only on a

special service in the lands for infeftment in which a Pre-^{parties}cept was sought, but the new Statute makes it competent ^{served Heir}in general. for any Person to apply for and obtain such Precept, on lodging, along with the Charter or Charters or other title, an extract retour, or decree of general service, duly expedited and recorded, instructing the propinquity of such person to the party who died last vest and seised in the subjects, or the character of Heir otherwise vested in him, and establishing his right to succeed to the said lands.

The Precept granted on production of such extract re-^{Form of}tour, or decree of general service, must be expressed in the ^{Precept.}form, or as nearly as the case will admit, of the Schedule B., annexed to the Act, and shall be applied for, revised, and obtained in like manner, as hereinbefore mentioned, Chapter II., in regard to Charters, and the infeftment passing on such Precept shall be as valid and effectual as ^{Effect of}the infeftment passing on any Precept for infefting Heirs ^{Precept.}hitherto in use to be issued from Chancery. § 19.

The Director of Chancery or his Depute or Substitute are ^{"Record of}appointed to record at full length every Precept, whether ^{Precepts"}established. of Crown or Principality lands, issued from Chancery for infefting heirs, in a book or books to be kept exclusively for that purpose, intituled "The Record of Precepts;" and extracts from the said Record, certified by the Director of Chancery, or his Depute or Substitute, shall make entire faith in all cases, except in case of improbation. § 20.

A Charter of Confirmation may be combined with a Pre-^{Charter of}cept for infefting an heir; and in every case in which such ^{Confirma-}Charter and Precept are contained in the same writ, it shall ^{tion may be}be sufficient for its validity that it pass under the seal ap- ^{combined}pointed by the Treaty of Union to be used in place of the ^{with Pre-}Great Seal or the Seal of the Prince, and if his separate ^{cept.}Seal. seal be then in use for such Charters, in like manner with the Charter of Confirmation when contained in a separate deed. § 21.

CHAPTER VII.

CHARTERS OF NOVODAMUS.

Charter of
Novodamus,
how to be
obtained.

In every case in which a Charter of Novodamus, or a Charter containing any new or original grant, shall be sought, the person applying for the same must obtain the consent and approbation of the Commissioners of Her Majesty's Woods and Forests, and written evidence of such consent must be produced along with the note applying for the Charter, in the office of the Presenter of Signatures. The Charter of Novodamus will be revised and engrossed as in the ordinary case, but before being sealed, must be lodged with the Queen's and Lord Treasurer's Remembrancer, and be by him transmitted for the sign manual of Her Majesty, and the signatures of the Lord High Treasurer or the Commissioners of Her Majesty's Treasury, and in case such Charter be of lands holden of the Prince, and His Royal Highness be then of full age, for the consent and approbation of the Prince, signified under his sign manual, after which the proper seal will be attached to such Charters, and the other procedure be as is provided in regard to Charters from the Crown and Prince generally. § 22.

CHAPTER VIII.

PRESENTER OF SIGNATURES.

Presenter of
Signatures.

The Presenter of Signatures, if required, must discharge the duties of Sheriff of Chancery, and shall receive an additional allowance to be fixed by the Lords of the Treasury, who may regulate the salary of the Presenter of Signatures when any vacancy occurs. §§ 29, 30, 31.

The Prince of Scotland, being of full age, may appoint ^{Officers of} his own Presenter of Signatures and other Officers of Ex-^{Prince.}chequer and Chancery. § 34.

CHAPTER IX.

FEES.

The Fees on signatures presently payable to the Pre- ^{Fees.}sender of Signatures shall be chargeable on the Draft Charter, and all other Fees presently payable to the Officers of Exchequer on Signatures shall cease and determine. § 3.

The Person applying for the Charter must pay to the Clerk of the Presenter of Signatures the Fees to be fixed by the Judges in Exchequer ; and these Fees must be paid over by such Clerk to the Director of Chancery, who shall be accountable therefor. § 7.

CHAPTER X.

COMPENSATION.

Persons suffering loss through the operation of the Act ^{Compensa-}are entitled to Compensation. §§ 32, 33. ^{tion.}

CHAPTER XI.

REGULATIONS.

The Judges in Exchequer are authorised from time to ^{Regulations}time to frame and enact, by rule of Court, all such regulations ^{to be made}as shall seem to them proper for giving effect to the pur- ^{by Judges in} ^{Exchequer.}

poses of the Act ; and the said Judges are appointed forthwith to frame and enact a rule of Court fixing and determining the fees to be paid on the various writs, steps of procedure, and other matters authorised by the Act ; such rule of Court being subject to the revision of the Judges at any time. § 28.

CHAPTER XII.

INTERPRETATION OF ACT.

Words. The words and expressions in the Act are explained by a special clause. § 35.

APPENDIX.

APPENDIX,

No. I.

ANNO DECIMO ET UNDECIMO VICTORIÆ REGINÆ,
CAP. XLVII.

An Act to amend the Law and Practice in *Scotland* as
to the Service of Heirs.

[25th June 1847.]

Commences 15th November 1847.

The words “And be it enacted,” are to be understood at
the beginning of each section.

WHEREAS it is expedient to amend the Law and Practice in
Scotland relative to the Service of Heirs: May it therefore
please Your Majesty that it may be enacted; and be it
enacted by the Queen's most Excellent Majesty, by and with
the Advice and Consent of the Lords Spiritual and Temporal,
and Commons, in this present Parliament assembled, and by
the Authority of the same, That from and after the Fifteenth
Day of *November* One thousand eight hundred and forty-
seven the Practice of issuing Brieves from Chancery for the
Service of Heirs shall cease, and it shall not be competent
to any Person to obtain himself served Heir by virtue of any
such Brieve, or otherwise than according to the Provisions
of this Act.

From 15th Nov.
1847 the Prac-
tice of issuing
Brieves from
Chancery for
Service of Heirs
shall cease.

Services to proceed by Petition to the Sheriff.

II. That from and after the Date aforesaid every Person desirous of being served Heir to a Person deceased, whether in general or in special, and in whatsoever Character, shall, instead of applying, as heretofore, for a Brieve from Chancery, present a Petition of Service to the Sheriff in manner hereinafter set forth.

Petition to be presented to the Sheriff of the County or to the Sheriff of Chancery.

III. That in every Case in which a general Service only is intended to be carried through, such Petition shall be presented to the Sheriff of the County within which the Deceased had at the Time of his Death his ordinary or principal Domicile, or, in the Option of the Petitioner, to the Sheriff of Chancery to be appointed under the Authority of this Act, and if the Deceased had at the Time of his Death no Domicile within *Scotland*, then in every such Case to the Sheriff of Chancery; and in every Case in which a special Service is intended to be carried through, such Petition shall be presented to the Sheriff within whose Jurisdiction the Lands or other Heritages are situated, or, in the Option of the Petitioner, to the Sheriff of Chancery, and in the event of the Lands or Heritages being situated in different Counties, then in every such case to the Sheriff of Chancery.

Nature and Form of the Petition.

IV. That such Petition shall be subscribed by the Petitioner, or by a Mandatory specially authorised for the Purpose, and shall be in the Form, or as nearly so as the Case will admit, of one or other of the Schedules (A.) and (B.) hereunto annexed, and shall, under the Exceptions after mentioned, set forth the Particulars which, according to the Law and Practice heretofore existing, have been in use to be set forth with reference to a Service sought to be carried through in any Claim presented to a Jury summoned under a Brieve of Inquest, and shall pray the Sheriff to serve the Petitioner accordingly: Provided always, that it shall not be necessary in such Petition to set forth in any Case the Value of the Lands, either according to new or old Extent, or the valued Rent thereof, or of whom the Lands are held, or by what Service or Tenure they are held, or in whose Hands the same have been since the Death of the Ancestor, or whether or how long the same have been in Non-entry, or

that the Petitioner is of lawful Age, or that the Ancestor died at the Faith and Peace of the Sovereign ; but that in setting forth the Death of the Ancestor there shall also be set forth the Date at or about which the said Death took place ; and that in every Case in which the Petitioner claims to be served Heir of Provision, whether in general or special, the Deed or Deeds under which he so claims shall be distinctly specified.

V. That in all Cases of Special Service, where the Lands are held under a Deed of Entail, it shall be lawful and competent in such Petition of Service, and in the Decree of Service to follow thereon, and in the Precepts, Sasines, or other Instruments necessary to complete the Investiture of the Lands which shall follow on such Decree, to omit the full Insertion of the Conditions and Provisions, and prohibitory, irritant, and resoluteive Clauses of such Deed of Entail, provided such Conditions and Provisions, and prohibitory, irritant, and resoluteive Clauses shall be therein specially and directly referred to as set forth at full Length in the recorded Instrument of Sasine in favour of the deceased Person served to, or as set forth at full Length in the Deed of Entail itself, if the same shall have been recorded in the Register of Tailzies, or as set forth at full Length in any recorded Instrument of Sasine forming a Part of the Title Deeds of the Lands held under such Deed of Entail, such Reference being made in the Form or as nearly as may be in the Form shewn in Schedule (B.) hereunto annexed ; and the Reference thus made to such Conditions and Provisions, and prohibitory, irritant, and resoluteive Clauses, shall be held legally equivalent to the full Insertion thereof, and shall to all Intents, and in all Questions whatever, whether *inter hæredes* or with Third Parties, have the same legal Effect as if the same had been inserted exactly as they may be expressed in the recorded Deed or Instrument referred to, notwithstanding of any Injunction to the contrary contained in such Deed of Entail, and notwithstanding of any Law or Practice to the contrary, and notwithstanding the Enactments or Provisions to the contrary contained in an Act of the Parliament of Scotland made in the Year One thousand six

Conditions of Entail and other Conditions may be referred to instead of being inserted at length.

hundred and eighty-five, intituled *Act concerning Tailzies*, or in any other Act or Acts of the Parliament of *Scotland* or of *Great Britain* now in force, all which are hereby repealed to the Extent of making this Enactment operative, but no further.

Burdens, Conditions, and Limitations may be referred to.

VI. That in all Cases of Special Service, where the Lands are held under any Real Burdens or Conditions or Limitations whatsoever appointed to be fully inserted in the Investitures of such Lands, it shall, notwithstanding such Appointment, and notwithstanding any Law or Practice to the contrary now existing, be lawful and competent in the Petition of Service, and in the Decree of Service to follow thereon, and in the Precepts, Sasines, or other Instruments necessary to complete the Investiture which shall follow on such Decree, to omit the full Insertion of such Real Burdens or Conditions or Limitations ; provided such Real Burdens or Conditions or Limitations shall be therein specially and directly referred to as set forth at full Length in the recorded Instrument of Sasine in favour of the deceased Person served to, or as set forth at full length in the recorded Instrument of Sasine or of Resignation *ad remanentiam* of the said Lands in which the same were first inserted, or in any other intermediate recorded Instrument of Sasine, such Reference being made in the Form or as near as may be in the Form shown in Schedule (B.) hereunto annexed ; and the Reference thus made to such Real Burdens or Conditions or Limitations shall be held as legally equivalent to the full Insertion thereof, and to all Intents and in all Questions whatever, whether with the Disponer or Superior or Third Parties, shall have the same legal Effect as if the same had been inserted exactly as they may be expressed in the recorded Instrument referred to, notwithstanding any Law or Practice or any Act or Acts of Parliament to the contrary, all which are hereby repealed to the Extent of making this Enactment operative, but no further.

Services not to proceed till Publication be made.

VII. That when any such Petition shall be presented to the Sheriff of any County the Service shall not proceed until Publication shall be made in such County, nor until the Sheriff Clerk of the County shall have received from the Sheriff Clerk of Chancery official Notice that Publication has been

made edictally in *Edinburgh*; and when such Petition shall be presented to the Sheriff of Chancery the Service shall not proceed until Publication shall have been made edictally in *Edinburgh*, nor until the Sheriff Clerk of Chancery shall have received official Notice that Publication has been made in the County of the Domicile of the Party deceased, or the County or Counties in which the Lands are situated, as the Case may be; and the edictal Publication in *Edinburgh* shall be at the Office of the Keeper of Edictal Citations in the General Register Office, and in the same mode and Form as in Edictal Citations; and in the County of the Domicile, and in the County or Counties where the Lands are situated, by affixing on the Doors of the Court-house, or in some conspicuous Place of the Court, or of the Office of the Sheriff Clerk, as the Sheriff may direct, a short Abstract of the Petition, and there shall be no farther Publication; and the Form of such Abstract, and the Mode or Form of the official Notice of such Publications, shall be fixed and declared by the Court of Session, in virtue of the Powers hereinafter mentioned.

VIII. That the Sheriff Clerk of Chancery to be appointed in virtue of this Act, and the Sheriff Clerks of each County, shall be bound to receive any Caveat against any Petition of Service to be presented to them respectively, and on the Receipt of the Petition of Service referred to in the Caveat, or of any official Notice of any such Petition which may be communicated to such Sheriff Clerk of Chancery or such Sheriff Clerks respectively, such Sheriff Clerk of Chancery or Sheriff Clerks shall within Twenty-four Hours thereafter write and put into the Post Office a Notice of such Petition, addressed either to the Agent by whom or to the Person on whose behalf the Caveat is entered, according to the Name and Address which shall be stated in such Caveat, the Clerk receiving therefor a Fee for his own Use of such Amount as shall be fixed by Act of Sederunt as aforesaid.

IX. That a Petition of Service so presented shall, after Expiration of the Period hereinafter mentioned, be equivalent to and have the full legal Effect of a Brieve of Service duly executed, and of a Claim duly presented to the Inquest, accord-

Caveats to be received.

Petition of Service to be equivalent to a Brieve and Claim.

ing to the Law and Practice heretofore existing ; and every Petition of Service, without further Publication than is herein provided and may be directed by Act of Sederunt, shall be held as duly published to all Parties interested, and the Decree to follow upon such Petition shall not be questionable or reducible upon the Ground of Omission or Inaccuracy in the Observance by any Officer or official Person of any of the Forms or Proceedings herein prescribed or which shall be prescribed by Act of Sederunt made in relation to such Petitions of Service.

Procedure before the Sheriff, and the Effect of his Judgment.

X. That in regard to all Petitions of Service presented to the Sheriff of Chancery or to the Sheriff of a County respectively where the Deceased died in *Scotland*, no Evidence shall be led, nor Decree pronounced thereon by such Sheriff, until after the Lapse of Fifteen Days from the Date of the latest Publication, or where Publication is to be made in *Orkney* or *Shetland*, or the Petition is presented to the Sheriff of *Orkney* or *Shetland*, until after the Lapse of Thirty Days from such Date, and in regard to all Petitions of Service to be presented to the Sheriff of Chancery where the Deceased died abroad, no Evidence shall be taken nor Decree pronounced thereon by him until after the Lapse of Thirty Days from the Date of Publication in *Edinburgh* ; and it shall be lawful, after the Lapse of the Times respectively above mentioned, to the Sheriff to whom such Petition of Service shall have been presented, by himself or by the Provost or any of the Bailies of any City or Royal Burgh, who is hereby authorised to act as Commissioner of such Sheriff without special Appointment, or by any Commissioner whom such Sheriff may appoint, to receive all such Evidence, documentary and parole, as according to the Law and Practice heretofore existing might competently be laid before the Jury summoned under the Brieve of Inquest, and any parole Evidence so received shall be taken down in Writing according to the existing Practice in the Sheriff Courts of *Scotland*, and a full and complete Inventory of the Documents produced shall be made out, and shall be certified by the Sheriff or his Commissioner aforesaid ; and on considering the said Evidence the Sheriff shall, without the Aid of a Jury, pronounce Judgment, serving the

Petitioner in Terms of the Petition, in whole or in part, or refusing to serve the said Petitioner, and dismissing the Petition, in whole or in part, as shall be just; and the said Judgment shall be equivalent to and have the full legal Effect of the Verdict of the Jury under the Brieve of Inquest according to the Law and Practice heretofore existing.

XI. That it shall be lawful to any Person who may conceive that he has Right to be served preferable to that of the Person petitioning the Sheriff as aforesaid, also to present a Petition of Service to the Sheriff in manner and to the Effect aforesaid, and which shall be proceeded with in manner hereinbefore directed; and it shall be lawful to the Sheriff, if he shall see Cause, to sist Procedure on the first Petition in the meantime, and to conjoin the said Petitions, and thereafter to proceed to take Evidence in manner hereinbefore directed, allowing to each of the Parties not only a proof in chief with reference to his own Claim but a conjunct Probation with reference to the Claim of such other Parties; and the Sheriff shall, after receiving the Evidence, pronounce Judgment on the said Petitions, serving or refusing to serve as may be just, and shall at the same Time dispose of the Matter of Expenses.

XII. That on the Application of the Petitioner in whose Favour a Judgment shall have been pronounced by the Sheriff as aforesaid the Sheriff Clerk shall forthwith transmit to the Office of the Director of Chancery the Petition on which such Judgment was pronounced, together with such Judgment, the Proof taken down in Writing as aforesaid, and the Inventories of written Documents made up and certified as aforesaid, and also any other Parts or Steps of the Process, excepting any original Documents or Extracts of recorded Writs produced therewith, which after Judgment is pronounced shall be returned, on Demand, to the Parties producing the same; and on the Proceedings being so transmitted to Chancery such Judgment shall be recorded by the Director of Chancery, or his Depute, in the Manner and Form to be directed or approved of from Time to Time by the Lord Clerk Register; and on such Judgment being so recorded the

Competing Petition may be presented, and Sheriff, after receiving Evidence, give judgment.

Recording and Extract of Judgment.

Director of Chancery, or his Depute, shall prepare an authenticated Extract thereof, and transmit the same without Delay, and without Charge or Expense against the Party in respect of the Transmission and Retransmission, to the Sheriff Clerk of the County, to be by him delivered to the Party or his Agent in the Sheriff Court; and such Proceedings and Judgment shall, both prior and subsequent to the said Transmission, be at all Times patent and open to Inspection in the Office of the Sheriff Clerk and of the Director of Chancery respectively; and certified Copies shall be given to any Party demanding the same, on Payment of such Fees as shall be fixed as aforesaid.

The Extract Decree to be equivalent to an Extract Retour.

XIII. That the Decree of Service so recorded and extracted shall have the full legal Effect of a Service duly retoured to Chancery, and shall be equivalent to the Retour of a Service under the Brieve of Inquest according to the Law and Practice heretofore existing; and the Extract of such Decree, or any second or later Extract thereof, under the Hand of the proper Officer entitled to make such Extracts for the Time, shall be equivalent to and have the full legal Effect of the certified Extract of the Retour now in use according to the existing Law and Practice; and the Decree of Service so recorded and extracted shall not be liable to Challenge, nor be set aside, except by a Process of Reduction to be brought before the Court of Session as heretofore in use with regard to Services duly retoured to Chancery.

Transmission of Records.

XIV. That the Book or Books in Chancery in which such Decree shall be recorded as aforesaid shall be issued under the Direction and Authority of the Lord Clerk Register, for which no more than the prime Cost shall be Charged; and it shall not be lawful for the Director of Chancery to use any other Book or Books in framing the said Records; and the said Book or Books shall be intituled "The Record of Services," and shall have an Index or Abridgment connected therewith, to be prepared in Chancery in the Form and Manner to be pointed out or approved of by the Lord Clerk Register; and such Index shall be completed as soon as possible after the End of each Year, and shall be printed and pub-

lished, and printed Copies thereof shall be distributed and disposed of in such Manner as shall be directed or approved of by the Lord Clerk Register; provided always that if a more general distribution or publication of such Index or Abridgment other than to the official Individuals to be fixed by the Lord Clerk Register shall be made, then and in that Case Copies of the Index or Abridgment aforesaid shall be sold to the Public at the lowest Rate which will defray the Expense of printing the same, and an Account of the Sums to be received shall be exhibited by the Director of Chancery, and be examined and audited along with his other Accounts and such Index or Abridgment shall be so prepared, printed, and distributed at latest by the first day of *July* in each Year, beginning with the Year One thousand eight hundred and forty-eight; and the said Record of Services and other Proceedings shall be at all Times patent and open to Inspection in the Office of Chancery, on Payment of such a Fee as shall be regulated by Act of Sederunt, and Extracts from the said Record, or certified Copies of the said Proceedings, shall be given to any one demanding the same, on Payment of such Fees as shall be fixed by Act of Sederunt, by virtue of the Powers herein conferred; and the Director of Chancery shall have the Power and is hereby required to direct and regulate the Sheriff Clerks in the several Counties and the Sheriff Clerk of Chancery in regard to the Manner of arranging and transmitting the Petitions of Service and Procedure thereon, and also to prepare and furnish to the Sheriff Clerks of the several Counties the requisite printed Forms of the Intimations to be sent by them through the Post Office to the Sheriff Clerk of Chancery when Petitions of Service shall be presented in their respective Courts, or when they shall have received Notice to publish Petitions that have been presented to the Sheriff of Chancery.

XV. That the Amount of the Remuneration to the Clerks of Chancery for keeping the Record of Services, and arranging the Warrants, and preparing the Indexes and Abridgments, shall be fixed by Act of Sederunt, to be made by the Lords of Council and Session in virtue of the Powers herein conferred; and such remuneration, together with the Ex-

Clerks of Chancery to be remunerated for keeping Register, &c. by Act of Sederunt.

pense of printing the Index or Abridgment aforesaid, shall be paid from the Fees collected in the Office of Chancery, and an Account thereof shall be exhibited by the Director of Chancery, and be examined and audited along with his other Accounts.

No Person entitled to oppose a Service who could not appear against a Brieve of Inquest.

XVI. That no Person shall be entitled to appear and oppose a Service proceeding before the Sheriff in Terms of this Act who could not competently appear and oppose such Service proceeding under the Brieve of Inquest according to the Law and Practice heretofore existing; and all Objections shall be presented in Writing, and shall forthwith be disposed of in a summary Manner by the Sheriff; but without prejudice to the Sheriff, if he see Cause, allowing Parties to be heard *viva voce* thereon.

Proceedings may be advocated for Jury Trial.

XVII. That in all Cases in which there are competing Petitions conjoined as aforesaid, or in which any Person has competently appeared to oppose any Petition of Service presented to the Sheriff in Terms of this Act, it shall be competent to such of the Parties as may conceive the Case proper to be disposed of by Jury Trial, at any Time before the Proof is begun to be taken by the Sheriff in manner before provided, to present a Note of Advocation to the Court of Session praying the Court to advocate the Proceedings in order that the Case may be tried by a Jury, which Note of Advocation shall be proceeded with in like Manner with Notes of Advocation presented with a view to Jury Trial against Judgments of the Sheriff Courts of *Scotland* according to the existing Practice, and such Judgment shall be pronounced on the said Note of Advocation as shall be just; and in the event of its appearing proper that the Case should be tried by a Jury, the Lord President of either of the Two Divisions of the said Court, or such other of the Lords of Session as the Court may appoint, or as may be arranged by the Lord President of the Division, shall be the Judge at the Trial and preside thereat in like Manner as is done according to the existing Practice in Trials by Jury, and the Jury shall be chosen and summoned in like Manner as on such Trials; and the Verdict to be returned by the Jury shall be equally final and

conclusive with the Verdicts at present returned in Trials by Jury in the said Court, but with all and the like Remedies by Bill of Exceptions, Motion for new Trial, or otherwise at present competent: Provided always, that in every Case in which the Jury shall find a Verdict in favour of a Party petitioning to be served the Court shall, at the same Time with applying such Verdict, remit to the Sheriff from whom the Case was advocated, with Instructions to pronounce a Decree serving the said Party in Terms of this Act, which Decree may thereafter be extracted, and the Extract thereof recorded and given out in manner and to the Effect before provided.

XVIII. That in every Case in which the Sheriff has refused to serve a Petitioner, or dismissed his Petition, or repelled the Objection of an opposing Party, it shall be lawful to bring the said Judgment under Review by Note of Advocation presented to the Court of Session: Provided always, that such Note shall be presented within Fifteen, or, where the Proceedings have been taken in the Courts of *Orkney* or *Shetland*, Thirty Days from the date of the said Judgment; and that where the Judgment has been pronounced after Opposition duly entered or in competition, such Note shall be intimated to the opposite Party, and a Bond of Caution for Expenses be lodged with the Sheriff Clerk, in like Manner and under the same Regulations as in the Case of Advocations of final Judgments of the Sheriff Courts of *Scotland* according to the presently existing Practice, and such Note shall be proceeded with in like Manner with the Notes of Advocation against final Judgments aforesaid; and it shall be competent to the said Court, if it shall appear necessary for the right Determination of the Case, to allow further or additional Evidence to be taken, or to remit to the Sheriff to take the same, or to appoint the Case, or special Issues therein, to be tried by a Jury in manner and to the Effect and with all and the like Remedies as are before provided, and such Judgment shall be pronounced on such Note of Advocation as shall be just: Provided always, that in every Case in which the Sheriff has refused to serve, but in which the Court of Session shall be of opinion that the Party ought to be served, a Remit

Where Sheriff
refuses to serve
Petitioner, &c.
Judgment may
be reviewed.

shall be made to the Sheriff, with instructions to pronounce a Decree serving the said Party in Terms of this Act, which Decree may be thereafter recorded and extracted in manner and to the Effect before provided: Provided also, that nothing herein contained shall prejudice the Right of any Person whose Petition of Service shall be refused without any opposing or competing Party having appeared and been heard on the Merits of the Competition to present a new Petition at any Time thereafter, or the Right of either Party in any of the Proceedings hereby authorised in the Court of the Sheriff to bring under Challenge whatever Judgment may be pronounced therein, by Process of Reduction before the Court of Session on any competent Ground.

Procedure
when a Decree
of Service is
brought under
Reduction.

XIX. That in every Case in which a Process of Reduction of any Decree of Service shall be brought before the Court of Session it shall be competent to the said Court, if it shall appear necessary for the right Determination of the Case, either to allow further or additional Evidence to be taken in such Manner as may appear proper, or to appoint the Case, or special Issues therein, to be tried by a Jury; and such Jury Trial shall proceed in the same Manner and to the like Effect and with all and the like Remedies as are before provided in regard to Jury Trials under Notes of Advocation, and such Judgment shall be pronounced in the said Process as shall be just: Provided always, that wherever the Judgment of the Sheriff brought under Reduction has proceeded on competing Petitions conjoined as aforesaid, and the Court of Session shall determine that a different Person should be served from the Person preferred by the Sheriff, a Remit shall be made to the Sheriff, with Instructions to pronounce a Decree serving the said Person in Terms of this Act, which Decree may be thereafter recorded, and an Extract thereof given out in manner and to the Effect before provided; and in any Case of Reduction of a Service the Judgment shall be conclusive, as between the Parties to the Suit, against the Party whose Service is reduced, and shall have the same Effect as if the Action had contained a Conclusion of Declarator that the Party served was not entitled to be served in the

Effect of the
Decree of
Reduction.

Character claimed, and Judgment had been pronounced in Terms of that Conclusion.

XX. That all Proceedings authorised by the present Act to be taken in the Court of Session shall commence and be carried on in the same Manner with the same Description of Proceedings in ordinary Civil Cases, and any Judgment pronounced by the Lord Ordinary therein may be brought under Review of the Inner House by Reclaiming Note in like Manner as in such Cases, and all Judgments to be pronounced by the Court of Session in Terms of this Act shall be equally final and conclusive as the Judgments pronounced by the said Court in ordinary Civil Cases, and shall not be liable to Review by Reduction or otherwise, save and except to such Extent and Effect as Judgments by the said Court in ordinary Civil Cases are so liable: Provided always, that it shall be competent to appeal against the said Judgments to the House of Lords in like Manner as against Judgments of the Court in ordinary Civil Cases aforesaid.

Forms and Effect of Procedure in the Court of Session.

XXI. That for the Purpose of completing the feudal Title of the Heir so served, but of such Heir only, every Decree of Special Service shall contain a Precept of Sasine, and such Decree, being recorded and extracted as aforesaid, shall to all Intents and Purposes, unless and until reduced, be held equivalent to and have the full legal Operation and Effect of a Disposition in ordinary Form granted by the Party deceased being last infeft of the Lands contained in such Service to and in favour of the Heir so served, and to his other Heirs and Successors entitled to succeed under the Destination of the Lands contained in the Deceased's Investiture thereof, but under the whole Conditions and Qualifications of such Investiture as set forth or referred to in such extracted Decree of special Service, containing Obligation to infeft by Two several Infeftments and Manners of holding, one thereof to be holden of the Deceased and his Heirs in Free Blench for Payment of a Penny *Scots* in Name of Blench Farm at *Whitsunday* yearly, upon the Ground of the said Lands, if asked only, and freeing and relieving the Deceased and his Heirs of all Feu Duties and Services exigible out of the said

A Decree of special Service, besides operating as a Retour, shall have the Operation and Effect of a Disposition from the Deceased to his Heirs.

Lands by their immediate lawful Superiors thereof, and the other of the said Infestments to be holden from the Deceased and his Heirs of and under their immediate lawful Superiors in the same Manner that the Deceased, his Predecessors and Authors, held or might have holden the same, and that by Confirmation, with Assignment to the whole Writs and Rents of the Lands, and Precept of Sasine for infesting the Party served and his Successors in the Lands, all in common Form; and in order that such Sasine may be so taken by and the feudal Title be completed in the Person of the Heir so serving, it shall be lawful and competent for him to use such Decree of special Service in the same Manner and to the same Effect as if such Decree were actually a Disposition of the Nature above mentioned, and in particular he shall be entitled to obtain Infestment in the said Lands in virtue of the Precept of Sasine in such Decree of special Service, any Notary Public to whom such extracted Decree may be presented being hereby authorised to give Infestment in virtue thereof accordingly, which Infestment may be in the Form given in the Schedule (C.) hereunto annexed, and shall, with such Decree of special Service, form as effectual an Investiture in the said Lands, holding Base of the Deceased and his Heirs, until Confirmation thereof shall be granted by the Deceased's Superior or his Successors, as if such Investiture had been created by a Disposition from the Deceased as aforesaid, with an Infestment passed on the Precept of Sasine therein contained; but such Service shall not be transmissible for the Purpose of infesting in Manner and to the Effect aforesaid the Heir or Assignee of the Person so served: Provided always, that such Decree and Sasine, notwithstanding of any Prohibition against Subinfeudation or alternative Holding contained in the Charter or Contract or other Deed by which the Vassal's Right is constituted, shall form a valid feudal Investiture in favour of such Heir, without Prejudice to the Right of the Superior to require such Heir to enter forthwith as accords of Law, and to deal otherwise with such Heir as a Vassal unentered.

The Deceased's
Incapacity to
be no Hin-
drance.

XXII. That such Decree of Special Service shall have the full Effect and Operation aforesaid, although the Deceased

should have died in Nonage, or been of insane Mind, or laboured under any other Disability whatever, and as if a Disposition in the Terms aforesaid had been granted by the Party deceased when of full Age and Capacity to grant it.

XXIII. That no Decree of Special Service to be obtained in virtue of this Act shall operate or be held as equivalent to or as implying a General Service to the Deceased in the same Character, except as to the particular Lands and other Heritages thereby embraced ; and every such Decree of Special Service shall infer only a limited passive Representation of the Deceased, and the Person thereby served as Heir shall be liable for the Deceased's Debts and Deeds only to the Extent or Value of the Lands and other Heritages embraced by such Special Service and no farther.

A Special Service not to infer a general Representation, either active or passive.

XXIV. That in any Petition for Special Service as Heir of Line, or Heir Male it shall be competent to the Petitioner to pray for General Service in the same Character, and Decree may be pronounced in Terms of such Prayer as well as for Special Service ; and no farther Notice or Publication of the Petition of Service shall in such Case be necessary than is hereby required for such Petition of Special Service.

Heir of Line or Heir Male may petition for General Service.

XXV. That from and after the Fifteenth Day of November One thousand eight hundred and forty-seven it shall be lawful for any Person presenting a Petition for General Service to a deceased Person to state in such Petition, in the Form, as nearly as the Case will admit, pointed out in Schedule (D.) hereunto annexed, that he desires the Effect thereof to be limited to certain Lands or other Heritages which belonged to the Deceased, and which shall be embraced in a particular Specification thereof, to be annexed to such Petition for General Service, which Specification shall be in the Form, or as nearly as may be in the Form, given in the said Schedule (D.), and shall be subscribed by the Petitioner or his Mandatory ; and in preparing an Abstract of such Petition for Insertion in the Minute Book of the Court in which it shall be presented, and for Publication, it shall be described as a Petition for General Service, with Specification

A General Service may be applied for and obtained to a limited Effect by annexing a Specification ;

annexed ; and the Sheriff to whom such Petition for General Service, with a Specification annexed, shall be presented, in pronouncing Decree of Service on such Petition shall make reference to the Specification annexed thereto, and shall limit such Decree of Service to the Lands and other Heritages described in the said Specification, and the Effect of such Decree shall accordingly be taken and held in Law as so limited ; and a Copy of such Specification shall be embodied in the Extract of the said Decree, and shall be signed by the Sheriff Clerk, and recorded as Part thereof ; and every such Decree of General Service, with Specification annexed, shall infer only a limited passive Representation of the Deceased, and the Person thereby served as Heir shall be liable for the Deceased's Debts and Deeds only to the Extent or Value of the Lands or other Heritages contained in the relative Specification.

and it shall infer only a limited passive Representation.

Precepts of Clare constat and Entries *more burgi* to remain unaffected.

XXVI. That nothing herein contained shall in any way affect the Law or Practice presently existing in regard to the Entry of Heirs by Precept of Clare constat, or the Service and Entry of Heirs *more burgi*, in Burghs, in Tenements holden in Burgage, or by any similar Mode of Tenure known and effectual in Law.

Jurisdiction of the Sheriff of Chancery.

XXVII. That the Sheriff of Chancery shall have and possess such and the like Authority and Jurisdiction to entertain, try, and adjudicate, but in the Manner prescribed and directed by this Act, all Questions of and relating to the Service of Heirs, as any Sheriff or Judge Ordinary now has and possesses in any Case competent before such Sheriff or Judge Ordinary, or in any Case competent before the Sheriff of *Edinburgh* acting on Special Commission ; and such Sheriff of Chancery and his Substitute shall hold their Courts in any Court Room within the Parliament or new Session House of *Edinburgh* which may be assigned by the Lords of Session for that Purpose, or in which the Sheriff of *Edinburgh* is in use to sit for the Trial of any Brieve.

Power to the Court of Session to pass Acts of Sederunt.

XXVIII. That it shall be competent to the said Court of Session, and they are hereby authorised and required, from

Time to Time to pass such Acts of Sederunt as shall be necessary or proper for regulating in all respects the Proceedings under this Act before the Sheriff of Chancery or Sheriffs of Counties, and following out the Purposes of this Act; and the Fees to be paid in respect of any of the Proceedings to be taken in virtue hereof, and also the Charges to be made by Agents and Solicitors, whether in the Inferior Court or Court of Session, for any Proceedings under this Act, shall be audited and taxed in the same Manner as Charges for other judicial Proceedings in the said Courts respectively are audited and taxed.

XXIX. That it shall be lawful for Her Majesty from Appointment of Sheriff of Chancery. Time to Time to appoint a fit Person, being a Person qualified for the Office of Sheriff of a County in *Scotland*, to be the Sheriff of Chancery for the Purposes of this Act, and also to appoint a fit Person to act both as Sheriff Clerk of Chancery and as Clerk to the Presenter of Signatures in Exchequer.

XXX. Provided always, and be it enacted, That the Sheriff of Chancery shall, when authorised and required by the Lord Justice-General and President of the Court of Session, discharge the Duties at present or which may hereafter be attached to the Office of Presenter of Signatures, or any Part of these Duties, and that during such Part of the Year as may be required of him. Sheriff of Chancery, if required, to discharge the Duties of Presenter of Signatures.

XXXI. That it shall be lawful and competent for Agents qualified to practise before the Court of Session or before any Sheriff Court to practise before the Sheriff of Chancery as well as in the ordinary Sheriff Courts in Petitions of Service. Agents may practise before Sheriff Courts.

XXXII. That the Sheriff of Chancery and Sheriff Clerk of Chancery shall respectively receive such Salaries in respect of their Offices as shall be from Time to Time fixed by the Lord High Treasurer of the United Kingdom of *Great Britain* and *Ireland*, or by the Commissioners of Her Majesty's Payment of the Sheriff and Sheriff Clerk of Chancery.

Treasury of the said United Kingdom, or any Three or more of them, and such Salaries shall be payable out of the Fees receivable in the Office of Chancery, and Form a Part of the incidental Expenses of the said Office, and shall be stated and audited in the public Accounts of the Director and Clerks of Chancery.

Salary to be regulated by the Commissioners of the Treasury on Vacancy.

XXXIII. That whenever any Vacancy shall occur in the Office of Sheriff of Chancery it shall be lawful for the Commissioners of Her Majesty's Treasury, or any Three or more of them, to regulate the Salary of the Sheriff of Chancery as the then Circumstances of the Office may require.

Compensation, how to be applied for.

XXXIV. That it shall be lawful for any Person who conceives that he is entitled to Compensation for Loss to be suffered through the Operation of this Act to make Application to the Lord High Treasurer, or to the Commissioners of Her Majesty's Treasury of the United Kingdom of *Great Britain and Ireland* for the Time being, claiming such Compensation; and it shall be lawful for the said Lord High Treasurer or Commissioners of Her Majesty's Treasury to investigate such Claim, and call for such Evidence in relation thereto as he or they may think necessary; and upon such Claim being established to his or their Satisfaction the said Lord High Treasurer or Commissioners of Her Majesty's Treasury, or any Three of them, is and are hereby authorised and empowered to award to such Person such Compensation as he or they shall think him entitled to, either by the Payment of a gross Sum or by way of Annuity, as he or they shall think proper: Provided always, that a Copy of every such award for Compensation shall be laid before both Houses of Parliament within Ten Days from the Date thereof, if Parliament shall be then sitting, and if not, then within Ten Days after the Commencement of the Session next ensuing, and no such Award shall be final and conclusive until Two Months after the same shall have been so laid before Parliament; provided also, that if any Person to whom Compensation shall be so awarded by way of Annuity shall be afterwards appointed to any other public Office, such Compensation

tion shall be accounted *pro tanto* of the Salary payable to to such Person in respect of such other Office while he shall continue to hold the same.

XXXV. That the several Compensations which may be awarded under the Authority of this Act shall be payable and paid out of the Monies which by the Acts of the Seventh and Tenth Years of the Reign of Her Majesty Queen Anne were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, or Exchequer in *Scotland*. ^{Compensation, how to be paid.}

XXXVI. That the following Words and Expressions in this Act shall have the several Meanings hereby assigned to them, unless there be something in the Subject or Context repugnant to such Construction ; (that is to say,) ^{Interpretation of Act.}

Words importing the Singular Number shall include the Plural Number, and Words importing the Plural shall include the Singular Number :

Words importing the Masculine Gender shall include Females :

The Word " Month " shall mean Calendar Month :

The Word " Lands " shall extend to and include Teinds, Fishings, Patronages, Houses, Lands, Tenements, and Heritages of every Description, and generally all Rights and Subjects which may competently be taken up by General or Special Service :

The Word " Sheriff " shall include Sheriff Substitutes and the Sheriff of Chancery appointed in virtue of this Act, and the Presenter of Signatures acting as his Substitute.

XXXVII. That this Act may be amended or repealed by any Act to be passed during the present Session of Parliament. ^{Act may be Amended, &c.}

SCHEDULES to which the foregoing Act refers.

SCHEDULE (A.)

Form of Petition of General Service.

Unto the Honourable the Sheriff of [*specify the County, or say "of Chancery,"*] the Petition of *A. B.*, [*here name and design the Petitioner,*]

Humbly sheweth,

That the late *C.D.* [*here name and design the Ancestor to whom Service is sought*] died on or about the Day of , and had, at the Time of his Death, his ordinary or principal Domicile in the County of [*or furth of Scotland, as the Case may be*].

That the Petitioner is the eldest Son and nearest lawful Heir [*or state what other Relationship or Character of Heir the Party bears, and if the Service is as Heir of Provision, say, "nearest lawful Heir of Provision, under and by virtue of a Deed executed by E.F., dated the Day of " in General of the said C.D.*]

May it therefore please your Lordship to serve the Petitioner nearest and lawful Heir in General to the said *C.D.*, [*or whatever other Character of Heir is sought to be established here set it forth.*]

According to Justice, &c.

(*Signed by the Petitioner or his Mandatory.*)

SCHEDULE (B.)

Form of Petition of Special Service.

Unto the Honourable the Sheriff of [*specify the County, or say "of Chancery,"*] the Petition of *A. B.*, [*here name and design the Petitioner,*]

Humbly sheweth,

That the late *C.D.* [*here name and design the Ancestor*] died on or about the Day of last vest and seised in [*here describe the Lands or Subjects with refer-*

ence to which the Service is sought] conform to Charter, [or Disposition, or Precept of Clare constat, or *whatever else was the Deed on which the Ancestor's Infeftment proceeded here specify it,*] dated the Day of , and to Instrument of Sasine following thereon, recorded in the
 Register of Sasines, at the

Day of .

That the Petitioner is the eldest Son and nearest lawful Heir [*or state what other Relationship or Character the Party bears, and if the Service is as Heir of Provision, say "nearest lawful Heir of Provision," or "of Tailzie and Provision"*] in Special of the said *C.D.* in the Lands and others foresaid.

(*If it is wished to embrace a Service in General where the Service in Special is as Heir of Line or Heir Male, say "That the Petitioner is likewise Heir in General [or Heir Male in General] of the said C.D.," and at the End of the Prayer add, "and likewise as Heir in General [or Heir Male in General] of the said C.D."*)

May it therefore please your Lordship to serve the Petitioner nearest and lawful Heir in Special of the said deceased *C.D.* in the Lands and others above described [*or whatever else is the Character of Heir sought to be established here set it forth as above*].

According to Justice, &c.

(*Signed by the Petitioner or his Mandatory.*)

Note.—When the Lands are held under a Deed of Entail, here* add, "But always with and under the Conditions and Provisions, and prohibitory, irritant, and resoluteive Clauses, contained in a Deed of Entail granted by G.H. [here name and design the Granter] on the Day of in favour of I. K. and the Heirs [here insert the whole Destination of the Entail], and which Conditions and Provisions, and Clauses prohibitory, irritant, and resoluteive, are herein referred to, as at Length set forth in the said Deed of Entail, which is recorded in the Register of Entails on the Day of [or as at Length set forth in the above-mentioned registered Sasine in favour of the Deceased, or as

* The Statute contains no precise reference.—ED.

A.B. of the Lands and others above described. In witness whereof I have subscribed these Presents, written on this and the preceding Pages by E.F., my Clerk, before these Witnesses, the said E.F. and G.H. my Apprentice.

E.F., Witness.

G.H., Witness. (Signed) L.K., Notary Public.

Note.—When the Lands are held under a Deed of Entail, or when there are Real Burdens, Restrictions, Reservations, or other Qualifications, insert or refer to them as in the Decree.

SCHEDULE (D.)

Forms for a General Service where it is to be limited in its Effects by a Specification annexed.

(1.)

The Petition will be in the Form of Schedule (A.), adding at the Close of the Statement of the Petitioner, “ But the Petitioner desires that his General Service shall be limited to the Contents of the Specification annexed;” and adding at the Close of the Prayer of Petition, “ but under Limitation as aforesaid to the Contents of the Specification annexed.”

(2.)

Specification of the Lands and other Heritages which belonged to the deceased C.D. referred to in the Petition for General Service presented to the Sheriff of by A.B. as Heir of in General to the said deceased C.D.

[Here insert a Description of the Lands and other Heritages intended to be included in the Service, distinguishing each separate Property or Heritage, if there are more than One, by a separate Number.]

(Signed by the Petitioner or his Mandatory.)

APPENDIX,

No. II.

ANNO DECIMO ET UNDECIMO VICTORIÆ REGINÆ,
CAP. XLVIII.

An Act to facilitate the Transference of Lands and
other Heritages in *Scotland* not held in Burgage
Tenure.

[25th June 1847.]

Commences 30th September 1847.

The words "And be it enacted," are to be understood at the
beginning of each section.

WHEREAS it is expedient to facilitate the Transference of
Lands and other Heritages in *Scotland*, and to render the
same less expensive, and for that Purpose to amend the
Law of *Scotland* relative thereto: May it therefore please
Your Majesty that it may be enacted; and be it enacted by
the Queen's most Excellent Majesty, by and with the Advice
and Consent of the Lords Spiritual and Temporal, and
Commons, in this present Parliament assembled, and by the
Authority of the same, That in all Dispositions and Convey-
ances and other Deeds and Instruments necessary for the
Transmission of Lands and other Heritages in *Scotland* not
held Burgage, in which all or any of the following Clauses
are necessarily or usually inserted, (*videlicet*,) a Clause de-
claring the Term of Entry, a Clause of Obligation to infeft,
a Procuratory of Resignation, a Clause of Assignment of
Writs and Evidents, a Clause of Assignment of Rents, a
Clause of Obligation to free and relieve of Feu Duties and
Casualties due to the Superior, and of public Burdens, a
Clause of Warrandice, a Clause of Registration for Preser-
vation, or for Preservation and Execution, and a Precept of

In Conveyances
of Land &c.
certain Clauses
may be inserted
in the short
Forms given in
Schedule (A.)

Sasine, it shall be lawful and competent to insert all or any of such Clauses in the Form, or as nearly as may be in the Form, set forth in Schedule (A.) hereunto annexed ; and all or any of such Clauses, if so inserted in any such Disposition or Conveyance or other Deed or Instrument, shall be as valid, effectual, and operative to all Intents, Effects, and Purposes as if they had been expressed in the fuller Mode or Form now generally in Use.

Explanation of
the Import of
the Clause of
Obligation to
infest.

II. That the Clause of Obligation to infest, if the Clause shall be limited to an Obligation to infest *a me* only, shall be held to imply an Obligation on the Disposer to infest the Disponee and his Heirs and Assignees in the Subjects conveyed upon their own Expenses, to be holden from the Disposer and his Heirs and Successors of and under their immediate lawful Superiors in the same Manner as the Disposer himself, or his Predecessors or Authors, held, hold, or might have holden the same, and that either by Resignation or Confirmation, or both, the one without Prejudice of the other ; and the Obligation to infest, if granted to be holden *a me vel de me*, shall be held to imply an Obligation on the Disposer to infest the Disponee and his Heirs and Successors upon their own Expenses by Two several Infestments and Manners of holding, one thereof to be holden of the Disposer and his Heirs and Successors in Free Blench for payment of a Penny Scots in Name of Blench Farm at *Whitsunday* yearly upon the Ground of the Lands, if asked only, and freeing and relieving him and them of all Feu Duties, and other Duties and Services exigible out of the said Lands and others, by their immediate lawful Superiors thereof, and the other of the said Infestments to be holden from the Granter and his foresaids of and under their said immediate lawful Superiors in the same manner as the Granter, or his Predecessors or Authors, held, hold, or might have holden the same, and that either by Resignation or Confirmation, or both, the one without Prejudice of the other.

Explanation of
the Import of
other Clauses in
Schedule (A.)

III. That the Clause for resigning the Lands shall be held and taken to be equivalent to a Procuratory of Resignation in the Terms now in Use, and in the Case of Conveyances

by a Vassal to his Superior as equivalent to a Procuratory of Resignation *ad remanentiam*; and the Clause of Assignment of Writs and Evidents, unless specially qualified, shall be held to import an absolute and unconditional Assignment to such Writs and Evidents, and to all open Procuratories and Precepts therein contained to which the Disponer has right; and the Clause of Assignment of Rents, unless specially qualified, shall be held to import Assignment to the Rents to become due for the Possession following the Term of Entry, according to the legal and not the conventional Terms, unless in the Case of forehand Rents, in which Case it shall be held to import an Assignment to the Rents payable at the conventional Terms subsequent to the Date of Entry; and the Clause of Warrantice, unless specially qualified, shall be held to imply absolute Warrantice as regards the Lands, and Writs and Evidents, and Warrantice from Fact and Deed as regards the Rents; and the Obligation to free and relieve from Feu Duties, Casualties, and public Burdens, unless specially qualified, shall be held to import an Obligation to relieve of all Feu Duties or other Duties and Services or Casualties payable to the Superior, and of all public, parochial, and local Burdens due from or on account of the said Lands, prior to the Date of Entry; and the Clause of Consent to Registration, unless specially qualified, shall import a Consent to Registration and a Procuratory of Registration in the Books of Council and Session, or other Judges' Books competent, therein to remain for Preservation, and also, if for Execution, that Letters of Horning and all necessary Execution shall pass thereon upon Six Days Charge, on a Decree to be interponed thereto in common Form.

IV. That in all Cases where Lands or other Heritages are or shall hereafter be held under a Deed of Entail, it shall be lawful and competent, in Dispositions and Conveyances of such Lands, and in the Procuratories, Charters, Precepts of Clare constat, Decrees of Adjudication, Instruments of Sasine, and all other Deeds and Instruments of what Nature soever necessary to transmit, renew, or complete a Title under such Entail in such Lands, to omit the full Insertion of the

Conditions of
Entail may be
referred to as
already in the
Register of
Entails or Re-
gister of Sa-
sines.

Conditions and Provisions, and prohibitory, irritant, and resolute Clauses, of such Deed of Entail, provided such Conditions and Provisions, and prohibitory, irritant, and resolute Clauses, shall be in such Dispositions and Conveyances, Procuratories, Charters, Precepts of Clare constat, Decrees of Adjudication, Instruments of Sasine, and other Deeds and Instruments aforesaid, specially referred to as set forth at full Length in the recorded Deed of Entail, if the same shall have been recorded in the Register of Tailzies, or as set forth at full Length in any recorded Instrument of Sasine forming Part of the Progress of Title Deeds of the said Lands under the said Entail, such Reference being made in the Terms, or as nearly as may be in the Terms, set forth in Schedule (B.) hereunto annexed ; and the Reference thus made to such Conditions and Provisions, and prohibitory, irritant, and resolute Clauses, shall be held to be equivalent to the full Insertion thereof, and shall to all Intents and in all Questions whatever, whether *inter hæredes* or with Third Parties, have the same legal Effect as if the same had been inserted exactly as they may be expressed in the recorded Deed or Instrument referred to, notwithstanding any Law or Practice to the contrary, or any Injunction to the contrary contained in such Deed of Entail, and notwithstanding the Enactments or Provisions to the contrary contained in an Act of the Parliament of *Scotland* made in the Year One thousand six hundred and eighty-five, intituled *Act concerning Tailzies*, or any other Act or Acts of Parliament now in force, all which are hereby repealed to the Extent of making this Act operative, but no further.

Real Burdens
may be referred
to as already in
the Register
of Sasines.

V. That in all Cases where Lands or other Heritages are or shall hereafter be held under any Real Burdens or Conditions or Limitations whatsoever appointed to be fully inserted in the Investitures of such Lands, it shall, notwithstanding such Appointment, and notwithstanding any Law or Practice to the contrary now existing, be lawful and competent, in Dispositions and Conveyances of such Lands, Procuratories, Charters, Precepts of Clare constat, Decrees of Adjudication, Instruments of Sasine, and other Deeds and Instruments of what Nature soever necessary to transmit, renew, or com-

plete the feudal Title thereto, to omit the full Insertion of such Real Burdens or Conditions or Limitations, provided such Real Burdens or Conditions or Limitations shall, in such Dispositions and Conveyances, Procuratories, Charters, Precepts of Clare constat, Decrees of Adjudication, Instruments of Sasine, and other Deeds and Instruments aforesaid, be specially referred to as set forth at full Length in the recorded Instrument whether of Sasine or of Resignation *ad remanentiam* wherein the same were first inserted, or in any recorded Instrument of Sasine of subsequent Date forming Part of the Progress of Titles of the said Lands, such Reference being made in the Terms, or as nearly as may be in the Terms, set forth in Schedule (C.) hereunto annexed; and the Reference thus made to such Real Burdens or Conditions or Limitations shall be held to be equivalent to the full Insertion thereof, and shall to all Intents and in all Questions whatever, whether with the Disposer or Superior or Third Parties, have the same legal Effect as if the same had been inserted exactly as they may be expressed in the recorded Instrument referred to, notwithstanding any Law or Practice to the contrary, and notwithstanding any Act or Acts of Parliament to the contrary, which are hereby repealed to the Effect of making this Enactment operative, but no further.

VI. And whereas the Entry of Heirs and Disponees by Charter of Confirmation from the Superior is in daily Use and Practice, and such Form and Mode of Entry is in many Cases more convenient than Entry by Resignation, without being of Prejudice to the Interests of the Superior; be it enacted, That where any Person shall be infeft in Lands or Heritages in *Scotland* holden of a Subject Superior upon a Disposition or other Deed of Conveyance granted by the Person last entered and infeft, or granted by a Person whose own Title to such Lands and Heritages is capable of being made public by Confirmation according to the existing Law and Practice, which Disposition shall contain an obligation to infeft *a me* or *a me vel de me*, or upon a Decree of special service, or upon a Decree of Adjudication or of Sale, containing a Warrant of Infeftment in Terms of this Act, it shall be lawful and competent for such Person, upon Production to the Lord Ordinary on the Bills

Superior may
be compelled to
grant Entries
by Confirmation.

in the Court of Session of his Sasine in the said Lands and Warrants of the same, and upon showing the Terms and Conditions under which the said Lands are holden of the Superior thereof, to obtain Warrant for Letters of Horning to charge the Superior to grant in favour of such Party a Charter of Confirmation in the same Way and Form as is provided and in use for compelling Entry by Resignation; Provided always, that the Charger shall at the same Time pay or tender to such Superior such Duties or Casualties as he is by Law entitled to receive upon the Entry of the Charger; and that it shall be lawful for every such Superior to show Cause why he ought not to be compelled to give Obedience to such Charge by offering a Note of Suspension to the Court of Session in the usual Manner: Provided also, that such Superior shall be entitled to insert in the Charter to be granted by him the Clauses of Tenendas and Reddendo contained in the former Charters of such Lands and Heritages, and all other Clauses and Conditions contained therein, in so far as the same are usual and necessary, and are not set forth in such Instrument of Sasine, or duly referred to in Terms of this Act, or of an Act passed in the present Session of Parliament, intituled *An Act to amend the Law and Practice of Scotland as to the Service of Heirs*: Provided also, that where such Clauses and Conditions are set forth in such Instrument of Sasine, or duly referred to in Terms of this Act or any other Act, the same shall not, without the Vassal's Consent, be repeated at Length in such Charter of Confirmation.

10 & 11 Vict.
c. 47.

Charters of Confirmation in the Form of Schedule (D.) to imply a general Confirmation of all the Title Deeds of the Lands.

VII. That where any Charter of Confirmation, whether granted by Her Majesty or Her Royal Successors, or by the Prince of *Scotland*, or by a Subject Superior, shall confirm the Lands therein contained themselves, and the Instrument of Sasine therein in favour of the Person receiving such Charter, such Charter may be expressed in the Form set forth in Schedule (D.) hereunto annexed, and in whatever habile Form expressed shall be held to confirm in favour of such Person, so far as regards such Lands, the whole Dispositions and Instruments of Sasine, and other Deeds, Instruments, and Writings of and concerning the same necessary

to be confirmed in order to complete such Person's Investiture in the Lands as immediate Vassal of such Superior, and that although such Deeds, Instruments, and Writings may not be enumerated or set forth in such Charter.

VIII. And whereas the Remedy afforded for obtaining an Entry under the present Procedure by Declarator of Tinsel of Superiority is in many respects defective; be it enacted, That where the Person having Right to the Superiority of any Lands, which Superiority is not defeasible at the Will of the Vassal or Disponee, shall not have completed his feudal Title thereto so as to enable him to enter any Heir or Disponee of the Vassal last publicly infeft in the said Lands, or any Adjudger or other Party deriving Right from him, and where such Heir, Disponee, Adjudger, or other Party, if such Person had been infeft in the Superiority, would have been entitled to compel Entry in virtue of this Act, or of an Act passed in the Twenty-eighth* Year of the Reign of His Majesty King *George* the Second, or otherwise, it shall be competent to such Heir, Disponee, Adjudger, or other Party, provided the annual Reddendo attached to such Superiority shall not exceed Five Pounds Sterling in Value or Amount, to present a Petition to the Lord Ordinary on the Bills in the Form, or as nearly as may be in the Form, given in Schedule (E.) No. 1, hereunto annexed, praying for Warrant of Service on such Person, and for Decree in the Terms set forth in such Petition, and the Lord Ordinary on the Bills shall pronounce an Order for Service of such Petition in Terms, or as nearly as may be in Terms, of the Interlocutor given in Schedule (E.) No. 2, hereunto annexed; and if after such Service, and the Expiration of the Days of Intimation, such Person shall not comply with the Demand of the Petition by completing his Title and granting Entry to the Petitioner as aforesaid, or shall not show reasonable Cause to the Lord Ordinary why he delays or refuses so to do, he shall for himself and his Heirs, whether of Line, Conquest, Taillie, or Provision, forfeit and amit all Right to the said Superiority, and the Lord Ordinary shall pronounce Decree or Judgment accordingly to the Effect of entitling the Petitioner, and his Heirs and Successors in the said Lands in all

Where Superior's Title incomplete, Owner may in certain Cases apply to Lord Ordinary on the Bills to ordain him to complete his Title and grant an Entry, under pain of Forfeiture.

* Should be *Twentieth*.—ED.

Time thereafter, to hold the same as Vassals immediately of and under the next Over-superior by the Tenure and for the Reddendo by and for which the forfeited Superiority was held, all in the Form, or as nearly as may be in the Form, given in Schedule (E.) No. 3, hereunto annexed; and such Decree or Judgment, when extracted and recorded in the Register of Sasines appropriate to the Lands, shall be held absolutely to extinguish such Right of Superiority, and shall enable the Petitioner to apply to such Over-Superior, as his immediate Superior, for an Entry accordingly; and it is hereby provided, that in the renewed Investiture to be so obtained by the Petitioner under the Authority of the said Decree, the Tenendas and Reddendo contained in the Title Deeds of the forfeited Superiority shall be inserted in room of those contained in the Investiture of the Petitioner's Predecessor or Author, and the Lands shall be held by the Petitioner and his Successors according to the Tenure of the forfeited Superiority in all Time thereafter; and the Charter or Precept in the Petitioner's Favour shall be expressed as nearly as may be in one or other of the Forms given in Schedule (I.) hereunto annexed.

Or Owner may, in such Case, apply to Lord Ordinary on the Bills to authorise Application for an Entry to the Crown or Prince or mediate Superior as in Vice of the recusant Superior.

IX. That if in the Case aforesaid the annual Reddendo shall exceed in Value or Amount the Sum of Five Pounds Sterling, or, in the Option of the said Heir, Disponee, Adjudger, or other Party, whether the said annual Reddendo shall exceed the said Sum of Five Pounds Sterling or not, it shall be lawful for such Heir, Disponee, Adjudger, or other Party to present a Petition to the Lord Ordinary on the Bills in the Form, or as nearly as may be in the Form, of Schedule (F.) No. 1, hereunto annexed, praying for Warrant and Decree as there set forth, and the Lord Ordinary shall pronounce an Order for Service in the Terms, or as nearly as may be in the Terms of the Interlocutor given in Schedule (F.) No. 2, hereunto annexed; and if after such Service and Expiration of the Days of such Charge such Person shall not comply with the Demand of the Petition by completing his Title and granting Entry to such Petitioner as aforesaid, or shall not show reasonable Cause to the Lord Ordinary why he delays or refuses so to do, he shall for himself and his

Heirs, whether of Line, Conquest, Taillie, or Provision, forfeit and amit all Right to the Dues and Casualties payable on the Entry of such Petitioner, who shall also be entitled to retain his Feu Duties or other annual Prestations until fully paid and indemnified for all the Expenses of the Petition and Procedure thereon, and all the Expenses of completing his Title in Terms of this Act; and the Lord Ordinary shall pronounce interim Decree to that Effect, and grant interim Warrant for such Petitioner applying for and obtaining an Entry from the Crown or Prince of *Scotland*, or, in the Option of the Petitioner, from the mediate Over-Superior as acting in the Vice of such Superior, all in the Form, or as nearly as may be in the Form, given in Schedule (F.), No. 3, hereunto annexed; and such Petitioner shall be entitled forthwith to lodge, along with an Extract of the said Decree, in the Office of the Presenter of Signatures, a Draft of a proposed Charter or Precept from the Crown or Prince as in Vice of such Superior, with a short Note in Terms of the Act passed in the present Session of Parliament, to alter and amend the Practice in *Scotland* with regard to Crown Charters and Precepts from Chancery; and such Charter or Precept, for which the said Extract Decree shall be a sufficient Warrant, may be in the Form given in the Schedule (H.) hereunto annexed, and shall be as effectual as if granted by the mediate Superior of the Feu when duly infeft in the Superiority; and when there is a mediate Over-superior such Extract Decree shall, in the Option of the Petitioner, be directed against such mediate Over-superior, and shall be a sufficient Warrant for Letters of Horning to charge such Over-superior to enter the Petitioner by granting a valid Charter or Precept as in Vice of such Superior; and after Completion of his Title such Petitioner shall be entitled, if he thinks fit, to lodge, as Part of the Proceedings under the said Petition, an Account of the Expenses of that Process, and of completing his Title, and the Lord Ordinary shall, if required on the Part of such Petitioner, modify the amount thereof, and decern for Retention as aforesaid, in the Form given in Schedule (F.), No. 4, hereunto annexed.

X. That the Lands and others contained in such Charter Lands to be held tempora-

rily of the
Crown or
Prince or me-
diate Superior.

or Precept to be so obtained shall be holden of the Crown or Prince, or the mediate Over-superior, as in the Vice of the unentered immediate Superior, while and so long as he and his Successors, the immediate Superiors thereof, shall remain unentered, and thereafter until a new Entry in favour of the Vassal or his Successors shall become requisite.

The Party in
Right of the
Superiority
may lodge a
Minute tender-
ing Relinquish-
ment of his
Right, and if
accepted by the
Petitioner, the
Lord Ordinary
may interpose
his Authority.

XI. That when a Petition shall be presented as aforesaid praying for Warrant of Service and for Decree against any Person so having a Right to the Superiority of any Lands, and not having completed his feudal Title thereto, whether the annual Reddendo shall be above or below the Value or Amount of Five Pounds Sterling, it shall be competent for him at any Time before Expiration of the Days of Intimation, or before interim Decree shall have been extracted as aforesaid, to lodge, as Part of the Proceedings under such Petition, a Minute, signed by himself or by his Mandatory or Agent, duly authorised by him in Writing, stating that he tenders Relinquishment of the Right of Superiority which he holds on Apparency in favour of the Petitioner and his Heirs and Successors, and such Minute shall be in the Form, or as nearly as may be in the Form, given in Schedule (G.), No. 1, hereunto annexed; and if the Petitioner shall by himself or his Counsel or Agent subscribe or indorse upon such Minute an Acceptance of the same in the Form given in Schedule (G.), No. 2, hereunto annexed, the Lord Ordinary is hereby authorised and required, on the Petitioner's Motion, to interpose his Authority to such Minute and Acceptance, and to decern and declare the Right of Superiority thus relinquished to be extinguished, to the Effect of making the Petitioner and his Successors in the said Lands hold the Lands as Vassals immediately of and under the Superior of the relinquished Superiority in Permanency and by the Tenure and for the Reddendo by and for which such relinquished Superiority was held, the Decree so to be pronounced to be in the Form, or as nearly as may be in the Form, of Schedule (G.), No. 3, hereunto annexed; and the said Decree, when extracted and recorded in the Register of Sasines appropriate to the Lands, shall entitle the Petitioner and his foresaids to apply for an Entry to such Superior accordingly

as his immediate Superior ; and in the renewed Investiture to be obtained by the Petitioner under the Authority of the said Decree, the Tenendas and Reddendo contained in the Title Deeds of the relinquished Superiority shall be inserted in room of those contained in the Investiture of the Petitioner's Predecessor or Author, and the Lands shall be held by himself and his Successors according to the Tenure of the relinquished Superiority in all Time thereafter ; and the Charter or Precept, as the Case may be, in the Petitioner's Favour may be expressed in one or other of the Forms given in Schedule (I.) hereunto annexed ; but nothing herein contained shall be held as rendering it imperative on the Petitioner to accept of the offered Relinquishment, and to take the Place of his immediate Superior, it being hereby provided, that if he prefers it he shall be entitled to refuse the same, and to complete his Title by Entry from the Crown or Prince of *Scotland*, or the mediate Over-superior, as in the Vice of his immediate Superior.

XII. That the Investiture thus completed upon the Forfeiture of such Heir Apparent, or upon the Relinquishment of the Superiority by such Heir Apparent, and Acceptance by the Petitioner, shall in all respects, and to all Intents and Purposes, be as effectual as if such apparent Heir had completed his Titles to the Superiority, and thereafter conveyed the same to the Petitioner, and the latter, after completing his Titles under the Over-superior, had resigned *ad remanentiam* in his own Hands : Provided always, that the Title so completed shall not in any respect extend the Interests of such Over-superior, and that he shall be entitled to no more than the Casualties, whether taxed or untaxed, to which he would have been entitled if such apparent Heir had remained his Vassal.

XIII. Provided always, and be it enacted, That in the Case of such Forfeiture or Relinquishment of Superiority by any apparent Heir in manner above mentioned, the Vassal obtaining or accepting the same, and making up Titles under the Over-superior, shall be liable, but subject always to Retention of Expenses as aforesaid, for the Value of the said

Over-superior's Rights not to be extended or affected.

Vassal obtaining or accepting Forfeiture or Relinquishment of Superiority to be liable for its Value, but Forfeiture or Re-

Relinquishment
not to infer Re-
presentation.

Superiority to the said Heir Apparent, or any Person in his Right, or having Interest, as accords of Law ; and such Forfeiture or Relinquishment by such Heir Apparent shall not infer a passive Representation on his Part, nor any Liability for the Debts of the Person last infeft therein, beyond the Price, if any, which he may receive for such Forfeiture or Relinquishment ; and the Vassal, if he accepts thereof, shall not be accountable in any Case for more than the Value or Price of the forfeited or relinquished Right.

Forfeiture to
take effect and
Relinquish-
ment lawful al-
though Superi-
ority form Part
of an Estate
held under Pro-
hibitions
against Aliena-
tion, &c.

XIV. Provided always, and be it enacted, That such Forfeiture, whether of the Right itself, of Superiority, or of the Dues and Casualties payable on the Entry of such Petitioner, shall take effect, and such Relinquishment shall be lawful and competent, although the Superiority shall form Part of an Estate held under Prohibitions against Alienation, or under Clauses prohibitory, irritant, and resolute of Entail ; but such Forfeiture, if incurred, or such Relinquishment, if made, shall not be construed as nor be held or taken to imply any Contravention of such Prohibition against Alienation, or of such Clauses prohibitory, irritant, and resolute of Entail, any thing contained in the Deeds forming the Investiture of such Estate of Superiority, or in the said recited Act of the *Scottish* Parliament, notwithstanding ; and the Price or Value of such Superiority, when relinquished, shall be applicable and applied in such and the like Manner, and to such and the like Purposes, as Purchase Money or Compensation coming to Parties having limited Interests is made applicable under the Lands Clauses Consolidation (*Scotland*) Act, 1845 ; and in the event of the Petitioner holding his Estate under Entail, such Price or Value paid for the relinquished Superiority shall be taken and held to be Entailer's Debt, and all Remedies competent to the Creditor for Recovery of Entailer's Debt, and all Remedies, Powers, and Faculties competent to an Heir of Entail in possession for Payment of Entailer's Debt, whether at Common Law, by Statute, or otherwise, shall be competent to such Creditor and to such Petitioner, and their Heirs and Representatives respectively.

XV. And whereas by the Law of *Scotland* as now exist-
 ing a Precept of Clare constat from a Subject superior to his
 Vassal is held to lapse and become ineffectual if Sasine is not
 passed thereon in the Lifetime of the Granter, which is at-
 tended with Inconvenience; be it enacted, That all Precepts
 of Clare constat already made and granted, and still subsist-
 ing in force, and all Precepts of Clare constat to be made and
 granted hereafter, shall, notwithstanding the Death of the
 Granter thereof, remain in full Force and Effect during the
 whole Lifetime of the Grantee, and shall continue effectual
 as a Warrant for giving Infestment to the Grantee in Terms
 thereof at any Time during the Grantee's Life.

Precepts of
 Clare constat
 not to fall by
 Death of the
 Granter.

XVI. That it shall no longer be competent to use Letters
 of general Charge or special Charge or general special Charge,
 but in an Action of Constitution of an Ancestor's Debt or Ob-
 ligation against his unentered Heir the Citation on and Execu-
 tion of the Summons in such Action shall be held to imply
 and be equivalent to a general Charge, the Induciæ of which
 shall expire with the Induciæ of such Summons, and shall in-
 fer the like Certification with such General Charge; and it
 shall thereafter be competent to adopt under such Summons
 the same Procedure, in all respects, and to pronounce the
 same Decree, which would have been competent had such
 Summons been preceded by Letters of general Charge duly
 executed against such Heir according to the Law and Prac-
 tice heretofore in Use, which Decree shall be a valid Decree
 of Constitution; and in an Action of Adjudication against
 such Heir following on such Decree of Constitution, or in an
 Action of Adjudication against an unentered Heir founded
 on his own Debt or Obligation, the Citation on and Execu-
 tion of the Summons of Adjudication shall be held to imply
 and be equivalent to a special Charge or general Special
 Charge, as the Circumstances may require, the Induciæ of
 which Charge shall expire with the Induciæ of such Sum-
 mons, and shall infer the like Certification with such special
 Charge or general special Charge, as the Case may be; and
 it shall thereafter be competent to adopt under such Sum-
 mons the same Procedure in all respects, and to Pronounce
 the same Decree, which would have been competent had such

General and
 special and ge-
 neral special
 Charges to be
 no longer com-
 petent.

Summons been preceded by Letters of special Charge or general special Charge, as the Case may be, duly executed against such Heir according to the Law and Practice heretofore in Use, which Decree shall be a valid Decree of Adjudication ; and in an Action of Constitution and Adjudication combined in the same Summons against an unentered Heir, it shall be competent to adopt the same Procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by Letters of general Charge duly executed against such Heir according to the Law and Practice heretofore in Use ; and in such combined Action of Constitution and Adjudication it shall be competent to pronounce Decree of Constitution and Adjudication in one and the same Interlocutor, and to extract the same in one and the same Extract, which Decree shall be a valid Decree of Constitution and Adjudication ; any thing in an Act of the Parliament of *Scotland* passed in the Year One thousand five hundred and forty, and in another Act of the Parliament of *Scotland* passed in the Year One thousand six hundred and twenty-one, or in any other Act of Parliament, or any Law or Practice, to the contrary notwithstanding, the said Acts being hereby repealed to the Extent of making these Enactments operative, but no further.

Bill for Summons of Adjudication and of Sale abolished.

XVII. That it shall no longer be necessary that a Summons of Adjudication or of Ranking and Sale be preceded by a Bill, such Bill being hereby abolished.

Unnecessary to libel and conclude for Decree of special Adjudication.

XVIII. And whereas it has been found inconvenient in Practice to libel and conclude for general Adjudication of Lands as the Alternative only of special Adjudication in Terms of an Act of the Parliament of *Scotland* passed in the Year One thousand six hundred and seventy-two ; be it enacted, That it shall no longer be necessary to libel or conclude for special Adjudication, and it shall be lawful to libel and conclude and decern for general Adjudication without such Alternative, any thing in the said last-mentioned Act or in any other Act of Parliament to the contrary notwithstanding, the said last-mentioned Act and such other Acts being hereby

repealed to the Effect of making this Enactment operative, but no further.

XIX. And whereas a Party who has obtained Decree of Adjudication or Decree of Sale is frequently exposed to Inconvenience from the Delay which may occur in obtaining Infestment; be it enacted, That in all Cases it shall be lawful for the Judges of the Court of Session, when pronouncing Decree of Adjudication, whether for debt or in Implement, or Decree of Sale, to grant Warrant in Terms, or as nearly as may be in Terms, of Schedule (K.) hereunto annexed, for infestment the Adjudger or Purchaser, and his Heirs and Successors, in the Lands and others contained in such Decree, to be holden by them alternatively by Two several Infestments and Manners of Holding, one thereof to be holden of the Party adjudged from and his Heirs in Free Blench for Payment of a Penny Scots in Name of Blench Farm at *Whitsunday* yearly upon the Ground of the said Lands, if asked only, and freeing and relieving the Party adjudged from and his Heirs of all Feu Duties and Services exigible out of the said Lands by their immediate lawful Superiors thereof, and the other of the said Infestments to be holden from the Party adjudged from and his Heirs of and under their immediate lawful Superiors in the same Manner that the Party adjudged from, his Predecessors and Authors, held or might have holden the same, and that by Confirmation; and the Adjudger or Purchaser, and his foresaids, shall, in virtue of such Decree of Adjudication or Decree of Sale, be entitled to complete their Title by obtaining Charter of Adjudication or of Sale from the Superior of the Lands and passing Infestment thereon, or, where the Person adjudged from is entered with his Superior or in a Situation to charge such Superior under the Powers herein contained to grant Entry by Confirmation, by taking infestment in virtue of the Warrant contained in such Decree, which Infestment may be in the Form given in Schedule (L.) hereunto annexed, and shall with the Decree of Adjudication or of Sale be an effectual feudal Investiture in the said Lands in Terms of such Decree, holding Base of the Party adjudged from and his Heirs, until Confirmation thereof shall be granted by the immediate Superior of the Lands,

Decrees of Adjudication and of Sale to contain Warrant for Infestment a me vel de me, and Infestment may follow accordingly.

or his Successors, in the same Manner and to the same Effect as if the Party adjudged from had granted a Disposition of the Lands to the Adjudger or Purchaser in the Terms of the Decree of Adjudication or of Sale, with an obligation to infest *a me vel de me*, to be completed by Confirmation, and a Precept of Sasine, and the Adjudger or Purchaser had been infest on such Precept; and the Effect of the Charter of Confirmation of the Sasine thus proceeding on such Decree of Adjudication or Decree of Sale shall be to make the Lands hold immediately of and under such Superior; but the Right of the Superior to the Composition payable by an Adjudger or Purchaser as due under the existing Law is hereby reserved entire, and the Adjudger or Purchaser, or his foresaids, by passing Infestment on the Decree of Adjudication or of Sale in manner above mentioned, shall become indebted in such Composition to the Superior, and shall be bound to pay the same upon the Superior's tendering a Charter of Confirmation, whether such Charter shall be accepted or not, and the Superior shall be entitled to recover Payment of such Composition as accords of Law; and it is hereby provided that the Sasine on such Decree of Adjudication, duly recorded, shall, without Prejudice to any other Diligence or Procedure, be of itself sufficient to make the Adjudication effectual in all Questions of Bankruptcy or Diligence: Provided always, that where the Charter, Contract, or other Deed by which the Vassal's Right is constituted contains a Prohibition against Subinfeudation or Alternative holding, such Decree and Sasine shall, notwithstanding any such Prohibition, form a valid feudal Investiture in favour of such Adjudger or Purchaser and their foresaids, but without Prejudice to the Right of the Superior to require such Adjudger or Purchaser, or his foresaids, to enter forthwith as accords of Law, and to deal with such Adjudger or Purchaser, or his foresaids, as with a Vassal unentered.

Judgment of
Lord Ordinary
on the Bills
subject to Re-
view of Inner-
House, and
Judgments in
certain Cases
to be final.

XX. That any Judgment pronounced by the Lord Ordinary in virtue of this Act shall be subject to Review by a reclaiming Note in ordinary Form; but the Judgment of the Lord Ordinary, if not so brought under Review, and the Judgment of either Division of the Court upon such reclaim-

ing Note, whether such Judgments shall have been pronounced in absence of the Respondent or not, shall be final and conclusive, and not subject to Review by Appeal to the House of Lords, or by Reduction, or in any other Mode or Form whatever; and it shall be competent to the Lord Ordinary, or to either Division of the Court reviewing any Judgment of the Lord Ordinary, if it shall appear to him or them to be just in the whole Circumstances of the Case, to find and decern in ordinary Form for the Expenses of any Proceedings under this Act against the Petitioner or Respondent personally.

XXI. That it shall be lawful to the Court of Session to pass such Act or Acts of Sederunt as the Court may deem proper for carrying into effect the Purposes of this Act. Court of Session may make Acts of Sederunt.

XXII. That in construing this Act, except where the Nature of the Provision or the Context of this Act shall be repugnant to such Construction, the Words "Superior," "Vassal," "Granter," "Grantee," "Disponer," and "Disponee," shall extend to and include the Heirs, Successors, and Representatives of such Superior, Vassal, Granter, Grantee, Disponer, or Disponee respectively; and the Word "Lands" shall extend to and include Teinds, Fishings, Houses, Lands, Tenements, and Heritages of every Description; and the Word "Charter" shall include Charters from the Crown and Prince as well as from Subject Superiors; and all Words used in the Singular Number shall be held to include several Persons or Things; and Words in the Plural shall include the Singular Number; and all Words importing the Masculine Gender shall extend and be applied to Females as well as Males. Interpretation Clause.

XXIII. That this Act shall take effect from and after the Thirtieth Day of *September* One thousand eight hundred and forty-seven. Act when to take effect.

XXIV. That this Act may be amended or repealed by any Act to be passed in this Session of Parliament. Act may be amended, &c.

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

After the inductive and dispositive Clauses the Deed may proceed thus:—“ With Entry at the Term of [*here specify the Date of Entry*]; and I oblige myself to infeft the said [*here insert the Name of the Disponee*] and his foresaids, to be holden a me [*or de me, or a me vel de me, as the Case may be*]; and I resign the said Lands and others for new Infeftment; and I assign the Writs, and have delivered the same according to Inventory; and I assign the Rents; and I bind myself to free and relieve the said [*here insert the name of the Disponee*] and his foresaids of all Feu Duties, Casualties, and public Burdens; and I grant Warrandice; and I consent to Registration hereof for Preservation [*or for Preservation and Execution*]. Moreover, I desire any Notary Public to whom these Presents may be presented to give to the said [*here insert the name of the Disponee*] or his foresaids Sasine [*or Liferent Sasine or Sasine in Liferent and Fee respectively, as the Case may be,*] of the Lands and others above disposed. In witness whereof [*here insert a Testing Clause in the usual Form*].”

Note.—The Clauses are assumed here as occurring in a Disposition, but they may be used in other Deeds and Instruments; and in the event of its being necessary to omit, vary, or qualify any one or more of them, this may be done, and the other Clauses may be retained.

SCHEDULE (B.)

Instead of inserting the Conditions of Entail at Length, these may be referred to as follows; viz.—“ But always with and under the Conditions, Provisions, Reservations, and

Clauses prohibitory, irritant, and resolute, specified and contained in a Disposition and Deed of Entail [*or, in the said Disposition and Deed of Entail, if it has been previously referred to,*] of the said Lands and others, executed by the deceased *E. F.*, bearing Date the Day of in the Year and recorded in the Register of Tailzies on the Day of in the Year [*or in an Instrument of Sasine in the said Lands and others in favour of G. H., recorded in the [here mention the Register in which the Sasine is recorded] upon the Day of in the Year].*”

And in subsequent Clauses of the Deed in which it is requisite or usual to refer again to the Conditions of the Entail the Reference may be made thus:—“ But always with and under the Conditions, Provisions, Reservations, and Clauses prohibitory, irritant, and resolute, before referred to.”

SCHEDULE (C.)

Instead of inserting the Burdens, &c., at Length, these may be referred to as follows ; viz.—“ But always with and under the Burdens, Conditions, Provisions, Restrictions, Limitations, and Obligations [or such of these as may apply to the Case] specified in an Instrument of Sasine in the said Lands and others [here describe the Sasine in which the Burdens, &c. were first inserted, or any subsequent Sasine in which they are inserted, forming Part of the Progress of the Titles to the Lands, the Sasine being described by the Name of the Party in whose Favour it was passed, the Register in which it is recorded, and the Date of Registration ; or, if it is previously referred to in the Disposition, say, in the said Instrument of Sasine in favour of the said above referred to,]” or if they are inserted in an Instrument of Resignation ad remanentiam, make a similar Reference to such Instrument.

And in subsequent Clauses in which it is requisite or usual

to refer again to the Burdens, &c., the Reference may be made thus :—“ But always with and under the Burdens, Conditions, Provisions, Restrictions, Limitations, and Obligations [or such of these as may apply to the Case] before referred to.”

SCHEDULE (D.)

I, *A. B.*, immediate lawful Superior of the Lands and others after mentioned, do hereby confirm for ever to and in favour of *C. D.* [*here name the Party in whose Favour the Charter is granted*], and his Heirs and Assignees whomsoever, heritably and irredeemably, all and whole [*here insert the Lands or other Heritages to be confirmed ; and if under Burdens, &c., use the Form in Schedule (C.)*], and an Instrument of Sasine in the said Lands, and others in favour of the said *C. D.*, recorded in the [*here describe the Register in which the Instrument is recorded*] on the _____ Day of _____
or of whatever other Date or Tenor the said Instrument of Sasine may be, to be holden, the said Lands and others, immediately of me and my Successors, Superiors thereof, in Free Blench [*or, in Feu Farm, as the Case may be,*] for ever, paying therefor a Penny Scots yearly of Blench Duty, if asked only, [*or if held in Feu Farm specify the other Payments and Services.*] And I consent to the Registration hereof. In witness whereof [*here insert the Testing Clause in the usual Form*].

SCHEDULE (E.)

No. 1.

Unto the Honourable the Lord Ordinary on the Bills, the Petition of *A. B.* humbly sheweth, That by Disposition dated the _____ granted by *C. D.* of _____ the said *C. D.* disposed to the Petitioner all and whole [*here describe the*

Subjects as in the Disposition], to be held of the Disposer's Superior, with Warrants of Resignation and Sasine.

That the Petitioner's Author, the said *C. D.*, held the said Lands and others of and under the late *F. F.* as his immediate lawful Superior for an annual Reddendo not exceeding in Value or Amount Five Pounds Sterling; that *G. H.* is the eldest Son [*or whatever other Relation he is*] and apparent Heir of the said *E. F.*, and as such has Right to the Superiority of the said Lands and others, but he has not made up a feudal Title thereto, and is therefore not in a Situation to grant Entry to the Petitioner, although demanded from him; and the Petitioner now applies to your Lordship for Redress in Terms of the Act [*here mention this Act*], and produces the above mentioned Disposition in his Favour.

May it therefore please your Lordship, in Terms of the said Act, to grant Warrant for serving this Petition on the said *G. H.* personally, or at his Dwelling Place, [*here add a Prayer for edictal Citation in the usual Form, if the Party is furth of Scotland*], and to ordain him within Thirty Days after the Date of such Service [*or within Sixty Days, if he be furth of Scotland or in Orkney or Shetland*], to procure himself entered and infeft in the said Lands and others, and to enter the Petitioner in the same, on Payment of the Duties and Casualties exigible on such Entry, or else to show Cause for delaying or refusing to do so, with Certification that, if he fail, he shall forfeit and amit all Right to the said Superiority; and in the event of the said *G. H.* failing so to complete his Title and grant Entry to the Petitioner, or to show reasonable Cause why he delays or refuses so to do, to find and declare that the said *G. H.* has forfeited and amitted all Right to the said Superiority, and that the Petitioner and his Heirs and Successors are entitled to hold the said Lands and others in all Time coming as Vassals immediately of and under the next Over-superior by the Tenure and for the Reddendo by and for which the forfeited Superiority was held. According to Justice, &c.

Note.—The above Form is applicable to the Case where the Petitioner requires a Charter of Resignation. In other Cases the Form must be varied, so far as necessary, to suit the Circumstances.

No. 2.

The Lord Ordinary grants Warrant to Messengers-at-Arms to serve the said Petition and this Deliverance on the said *G. H.*, as prayed for, and ordains the said *G. H.*, within Thirty Days [*or Sixty Days, as the Case may be*], after the Date of such Service, to procure himself entered and infeft in the Lands and others described in the Petition, and to enter the Petitioner in the same, on Payment of the Duties and Casualties exigible on such Entry, or else to show Cause for delaying or refusing to do so, with Certification that if he fail he shall forfeit and amit all Right to the said Superiority in Terms of the said Act.

No. 3.

The Lord Ordinary having resumed Consideration of the said Petition, with the Execution thereon, now expired, in respect the said *G. H.* has not shown Cause for delaying or refusing to complete his Title to the Superiority, and to grant an Entry to the Petitioner, finds and declares, That the said *G. H.* has forfeited and amitted all Right to the said Superiority, and that the Petitioner and his Heirs and Successors are entitled to hold the Lands and others described in the Petition in all Time coming as Vassals immediately of and under the next Over-superior by the Tenure and for the Reddendo by and for which the said forfeited Superiority was held; grants Warrant to the Petitioner and his foresaids to apply for and obtain an Entry in the said Lands and others from the said Over-superior, in the Terms foresaid; and decrees and ordains the Decree to be extracted hereon to be recorded in the Register of Sasines.

SCHEDULE (F.)

No. 1.

Unto the Honourable the Lord Ordinary on the Bills, the Petition of *A. B.* humbly sheweth, That by Disposition dated the _____ granted by *C. D.* of _____ the said *C. D.* disposed to the Petitioner all and whole [*here describe the Subjects as in the Disposition*], to be held of the Disposer's Superior, with Warrants of Resignation and Sasine.

That the Petitioner's Author, the said *C. D.*, held the said Lands and others of and under the late *E. F.* as his immediate lawful Superior; that *G. H.* is the eldest Son [*or whatever other Relation he is*] and apparent Heir of the said *E. F.*, and as such has Right to the Superiority of the said Lands and others, but he has not made up a feudal Title thereto, and is therefore not in a Situation to grant Entry to the Petitioner, although demanded from him. The Petitioner now applies to your Lordship for Redress in Terms of the Act [*here mention this Act*], and produces the above mentioned Disposition in his Favour.

May it therefore please your Lordship, in Terms of the said Act, to grant Warrant for serving this Petition on the said *G. H.* personally, or at his Dwelling Place, [*here add a Prayer for edictal Citation in the usual Form, if the Party is furth of Scotland,*] and to ordain him within Thirty Days after the Date of such Service [*or within Sixty Days, if he be furth of Scotland, or in Orkney or Shetland*], to procure himself entered and infeft in the said Lands and others, and to enter the Petitioner in the same, on Payment of the Duties and Casualties exigible on such Entry, or else to show Cause for delaying or refusing to do so, with Certification that if he fail he shall forfeit and amit all Right to the Duties and Casualties payable on the Entry of the Petitioner, and that the Petitioner shall be entitled to retain from him and his Successors, as immediate Superiors, the yearly Feu Duties and whole other Prestations, until fully paid and indemnified for all the Expenses of this Petition and Pro-

cedure to follow hereon, and for all the Expenses of completing the Petitioner's Title in Terms of the said Act; and thereafter, on resuming Consideration of this Petition, with or without Answers, to find and declare that the said *G. H.* has forfeited and amitted all Right to the Dues and Casualties payable on the Entry of the Petitioner, and that the Petitioner is entitled to retain from him and his Successors, as immediate Superiors, the yearly Feu Duties and whole other Prestations until fully paid and indemnified for all the Expenses of this Petition, and of the Procedure to follow hereon, and for all the Expenses of completing the Petitioner's Title in Terms of the said Act; and also to grant Warrant to the Petitioner to apply for and obtain an Entry in the said Lands and others from the Crown or Prince of Scotland, [*or I. K.*, the mediate Over-superior], as acting in the Vice of the said *G. H.*, and to authorise Decree to the above Effect to be extracted *ad interim*; and thereafter, upon the Completion of the Petitioner's Title by an Entry from the Crown or Prince of Scotland [*or such mediate Over-superior*] as aforesaid, to remit the Accounts of the Expenses of this Petition and Procedure hereon, and of the Expenses of completing the Petitioner's Title, to the Auditor to tax the same, and to report, and to modify the Amount of the said Expenses, and to decern for Retention of the Amount thereof as aforesaid, [*if the Parties have agreed to or are in Treaty for a Relinquishment add " or in the event of the said G. H. relinquishing the Superiority to find, decern, and declare the same to be extinguished in manner and to the Effect expressed in the Statute,"*] or to do otherwise in the Premises as to your Lordship shall seem just.—According to Justice, &c.

Note.—The above Form is applicable to the Case where the Petitioner requires a Charter of Resignation. In other Cases the Form must be varied, so far as necessary, to suit the Circumstances.

No. 2.

The Lord Ordinary grants Warrant to Messengers-at-Arms to serve the said Petition and this Deliverance on the said *G. H.*, as prayed for, and ordains the said *G. H.*, within Thirty Days [*or Sixty Days, as the Case may be,*] after the Date of such Service, to procure himself entered and infeft in the Lands and others described in the Petition, and to enter the Petitioner in the same, on Payment of the Duties and Casualties exigible on such Entry, or else to show Cause for delaying or refusing to do so, with Certification that if he fail he shall forfeit and amit all Right to the Duties and Casualties payable on the Petitioner's Entry, and this* the Petitioner shall be entitled to retain from him and his Successors, as immediate Superiors, the yearly Feu Duties and whole other Prestations until fully paid and indemnified for the Expenses of the Petition and Procedure thereon, and for all the Expenses of completing the Petitioner's Title in Terms of the said Act.

No. 3.

The Lord Ordinary having resumed Consideration of the said Petition, with the Execution thereon, now expired, in respect the said *G. H.* has not shown Cause for delaying or refusing to complete his Title to the Superiority, and to grant an Entry to the Petitioner, finds and declares, That the said *G. H.* has forfeited and amitted all Right to the Duties and Casualties payable on the Entry of the Petitioner, and that the Petitioner is entitled to retain from him and his Successors, as immediate Superiors, the yearly Feu Duties and whole other Prestations until fully paid and indemnified for all the Expenses of the said Petition and Procedure thereon, and for all the Expenses of completing the Petitioner's Title ; grants Warrant to the Petitioner to apply for and obtain an Entry in the Lands and others described in the Petition from the Crown or Prince of Scotland, [*or, I. K., the mediate*

* Should be *that*.—ED.

Over-superior,] as acting in Vice of the said *G. H.*, and decerns, and allows this Decree to go out and be extracted ad interim; and, on the Petitioner's Title being completed, appoints Accounts of the Expenses of the Petition and Procedure thereon, and of completing the Title, to be lodged, and remits the same, when lodged, to the Auditor to tax and report.

No. 4.

The Lord Ordinary approves of the Auditor's Report on the Petitioner's Accounts of Expenses, modifies the same to £ Sterling, and decerns against the said *G. H.* for Payment thereof to the Petitioner, by Retention, as prayed for [*or personally against the said G.H., as the Case may be*].

SCHEDULE (G.)

No. 1.

Minute of Relinquishment by as Heir Apparent
of in the Lands after mentioned, in the Petition at the instance of [*here name and describe the Petitioner*].

I, *A. B.*, eldest lawful Son [*or whatever Relation he may be*] and nearest lawful Heir Apparent of *C. D.*, the Person last infeft in the Superiority of the Lands of [*here describe the Lands fully*], which Right of Superiority is holden immediately of and under the Crown [*or other Over-lord, as the Case may be*], do absolutely and gratuitously [*or if any Price paid, say, "in consideration of £ Sterling to be paid to me,"*] relinquish and renounce the Superiority of the said Lands to which I hold Right as Heir Apparent aforesaid in favour of the Petitioner and his Successors in the said Lands. In witness whereof, &c. [*To be signed by the Party or by his Mandatory or Agent duly authorised in Writing and duly attested.*]

No. 2.

I accept Relinquishment in Terms of this Minute.

No. 3.

The Lord Ordinary interpones his Authority to the Minute of Relinquishment lodged by the Respondent, and decerns and declares the Right of Superiority thereby relinquished to be extinguished, to the Effect of giving Right to the Petitioner and his Successors to hold the Lands and others described in the Petition immediately of and under the Party who is Superior of the Feu now given up and extinguished, and by the Tenure and for the Reddendo by and for which the relinquished Feu was held, and decerns and appoints the Decree to be extracted hereon to be recorded in the Register of Sasines.

SCHEDULE (H.)

No. 1.—*Charter of Confirmation.*

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.—We do hereby confirm for ever to and in favour of *A. B.* [*here name the Disponee*], and his Heirs and Assignees whomsoever, heritably and irredeemably, all and whole [*here describe the Lands or other Heritages, and if under Burdens, &c. use the Form in Schedule (C.)*], and an Instrument of Sasine in the said Lands and others in favour of the said *A. B.*, recorded in the [*here describe the Register in which the Instrument is recorded*], on the Day of or of whatever other Date or Tenure* the said Instrument of Sasine may be; To be holden, the said Lands and others, of the Crown, as in room of *G. H.* [*here name the Person against whom Decree has been obtained*], the eldest Son [*or whatever other relation he may*

* Should be *Tenor*.—ED.

be] of *E. F.* [*here name the Person last Infeft in the Superiority*], who was last infeft in the immediate Superiority of the said Lands, in respect that the said *G. H.* having failed to complete his Title to the said Superiority, and to grant an Entry to the said *A. B.*, the said *A. B.*, in virtue of an Act [*here set forth the Title of this Act*], obtained a Decree by the Lord Ordinary on the Bills, dated the

granting Warrant to the said *A. B.* to apply for and obtain an Entry in the said Lands and others from the Crown, as acting in Vice of the said *G. H.*, and that while and so long as the said *G. H.* and his Successors, the immediate Superiors thereof, shall remain unentered, and thereafter until a new Entry shall become requisite, and that by the same Tenure by which the same were or might have been holden of the said *G. H.* And for Payment to him and his Successors, who are properly immediate lawful Superiors of the said Lands and others, of the annual Duties and Casualties heretofore payable, but only upon the Completion of their Title in the Superiority. In witness whereof we have ordered the Seal now used for the Great Seal of Scotland to be appended hereto, &c. [*according to the Chancery Form.*]

No. 2.—*Charter of Resignation.*

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.—We do hereby give, grant, and dispone, and for ever confirm to *A. B.* [*here name the Disponee*], and his Heirs and Assignees whomsoever, heritably and irredeemably, all and whole [*here insert the Lands or other Heritages, and if under Burdens, &c. use the Form in Schedule (C.)*], which Lands and others formerly belonged to *C. D.* [*here name the Disponer*], holden by him immediately of *E. F.* [*here name the Person who died last infeft in the Superiority*], in Terms of [*here state the Investiture of the Disponer*], and now of the Crown as in Vice of the immediate Superior thereof, in respect that the said *E. F.* being dead, and *G. H.* his eldest Son [*or whatever other Relation he may be*] and Heir Apparent, who is in right of the Superiority, having failed to complete his Title thereto and to grant an Entry to the said *A. B.*, the said *A. B.* in virtue of an Act

[*here set forth the Title of this Act*], obtained a Decree by the Lord Ordinary on the Bills, dated the granting Warrant to the said *A. B.* to apply for and obtain an Entry in the said Lands and others, from the Crown, as acting in Vice of the said *G. H.*, and which Lands and others have been resigned into our Hands as in Vice of the said *G. H.*, which Decree is recorded in the [*state here the Register of Sasines in which the Decree is recorded, and the Date of Registration*], by virtue of a Procuratory of Resignation contained in a Disposition of the said Lands and others, granted by him in favour of the said *A. B.*, dated the

To be holden, the said lands and others, of the Crown as in room of the said *G. H.*, who is properly the immediate lawful Superior thereof, while and so long as he and his Successors, the immediate Superiors thereof, shall remain unentered, and thereafter until a new Entry shall become requisite, and that by the same Tenure by which the same were or might have been holden of the said *G. H.* And for Payment to him and his Successors, who are properly the immediate lawful Superiors of the said Lands and others, of the Annual Duties and Casualties heretofore payable, but only upon the Completion of their Title in the Superiority. Moreover, we desire any Notary Public to whom this Charter may be presented, to give to the said *A. B.*, or his foresaids, Sasine of the Lands and others above described. In witness whereof we have ordered the Seal now used for the Great Seal of Scotland to be appended hereto, &c. [*according to the Chancery Form.*]

Note.—The Charter in favour of an Adjudger will be in similar Terms, but under the proper Modification. And a Precept from Chancery in favour of the Vassal's Heir, who has obtained Decree against the unentered Heir Apparent of his Superior, will be in similar Terms as applied to the Style of a Precept. And if the Charter or Precept is by the mediate Over-Superior, the necessary Alterations will be made.

SCHEDULE (I.)

No. 1.—*Charter of Confirmation proceeding on a Decree of Forfeiture or Relinquishment.*

I, *L. M.*, immediate lawful Superior of the Lands and others after mentioned, in virtue of a Decree of Forfeiture [*or Relinquishment, as the Case may be*], against *G. H.*, Heir Apparent of my immediate Vassal last infeft in the said Lands and others, pronounced by Lord _____, Ordinary on the Bills, upon the _____ Day of _____, in a Petition at the Instance of *A. B.* [*here name the Disponent*], do hereby confirm for ever to and in favour of the said *A. B.* and his heirs and Assignees whomsoever, heritably and irredeemably, all and whole [*here insert the Lands or other Heritages, and if under Burdens, &c. use the Form in Schedule (C.)*], and an Instrument of Sasine in the said Lands and others in favour of the said *A. B.*, recorded in the [*here describe the Register in which the Instrument is recorded*], on the _____ Day of _____, *or of whatever other Tenor the same may be*; To be holden, the said Lands and others, by the said *A. B.* and his foresaids, in all Time hereafter, immediately of me and my Successors, as Superiors thereof, in Free Blench Farm or [*in Feu Farm, as the Case may be, according to the Tenure by which the forfeited or relinquished Superiority was held,*] for ever, Paying therefor [*here specify the Reddendo for which the forfeited or relinquished Superiority was held*]; and I consent to the Registration hereof for Preservation. In witness whereof [*add a testing Clause.*]

No. 2.—*Charter of Resignation proceeding on a Decree of Forfeiture or Relinquishment.*

I, *L. M.*, immediate lawful Superior of the Lands and others after mentioned, in virtue of a Decree of Forfeiture [*or Relinquishment, as the Case may be,*] against *G. H.*, Heir Apparent of my immediate Vassal last infeft in the said Lands and others, pronounced by Lord _____, Ordinary on the

Bills, upon the Day of , in a Petition at the Instance of *A. B.* [*here name the Disponee*], do hereby give, grant, dispoñe, and for ever convey to the said *A. B.* and his Heirs and Assignees whomsoever, heritably and irredeemably, all and whole [*here insert the Lands or other Heritages, and if disposed under Burdens, &c. use the Form in Schedule (C.)*], which Lands and others above written formerly belonged to [*here insert the Name of the Disposer*], holden by him under my immediate Vassal, and now of myself, in Terms of [*here state briefly the Investiture of the last-entered Proprietor*], and have been resigned by him in my Hands, as now coming in place of his immediate Superior by virtue of a Procuratory of Resignation contained in a Disposition of the said Lands and others, made and granted by him in favour of the said *A. B.*, dated [*here insert the Date*], to be holden, the said Lands and others, by the said *A. B.* and his foresaids, in all Time hereafter, immediately of me and my Successors, as Superiors thereof, in Free Blench Farm [*or in Feu Farm, as the Case may be, according to the Tenure by which the forfeited or relinquished Superiority was held,*] for ever, paying therefor [*here specify the Reddendo for which the forfeited or relinquished Superiority was held*]; and I consent to the Registration hereof for Preservation. Moreover I desire any Notary Public to whom this Charter may be presented to give to the said *A. B.*, or his foresaids, Saisine of the Lands and others above described. In witness whereof [*add a testing Clause*].

No. 3.—*Precept of Clare constat proceeding on a Decree of Forfeiture or Relinquishment.*

I, *L. M.*, immediate lawful Superior of the Lands and others after mentioned, in virtue of a Decree of Forfeiture [*or Relinquishment, as the Case may be*], against *G. H.*, Heir Apparent of my immediate Vassal last infeft in the said Lands and others, pronounced by Lord , Ordinary on the Bills, dated the Day of , in a Petition at the Instance of *A. B.* [*here name and design the Heir in whose Favour the Precept is to be granted*]: Whereas by authentic

Instruments and Documents it clearly appears that *C. D.* [*here insert the Name of the last Proprietor of the Lands*] died last vest and seised as of Fee in [*here insert the Lands or other Heritages, and if under Burdens, &c. use the Form in Schedule (C.)*]; and that the said *A. B.* is eldest lawful Son [*or whatever Relation he may be*] and nearest and lawful Heir [*of Line, or whatever the Character may be,*] of the said *C. D.* in the said Lands and others; and that the said Lands and others are in virtue of the said Decree now holden of me and my Successors, as Superiors thereof, in Free Blench Farm [*or Feu Farm, as the Case may be, according to the Tenure by which the forfeited or relinquished Superiority was held,*] for ever, for Payment of [*here specify the Reddendo for which the forfeited or relinquished Superiority was held*]. Therefore I desire any Notary Public to whom these Presents may be presented, to give to the said *C. D.*, as Heir foresaid, Sasine of the Lands and others above described. In witness whereof [*add a testing Clause*].

Note.—Where the next Superior is Her Majesty or the Prince and Steward of Scotland, Charters by the Crown *Prince, or Precepts from Chancery, will be granted in similar Terms to the above, but adapted to the Forms of Chancery.

SCHEDULE (K.)

After granting Decree of Adjudication according to the Form presently in use, or according to the Form in use for the Time, the following Warrant to be inserted:—“ And the Lord Ordinary grants Warrant to any Notary Public to give to the said [*here mention the Name of the Adjudger or Purchaser*], and his Heirs and Successors, Sasine in the foresaid Subjects, in Terms of the 19th Section of the Act [*here mention this Act*].”

* Should be “Crown or Prince.”—ED.

SCHEDULE (L.)

At _____ there was [by or] on behalf of *A. B.* [here state the Name and Designation of the *Adjudger or Purchaser, or other Party in his Right,*] presented to me, Notary Public subscribing, an Extract Decree of Adjudication [or “ of Adjudication in Implement or of Sale,” *as the Case may be,*] dated the [here insert the Date of the Decree], obtained before the Lords of Council and Session in an Action at the Instance of [here mention the Party at whose Instance the Decree was obtained] against *C. D.* [here state the Name and Designation of the Party adjudged from], whereby the said Lords adjudged from the said *C. D.*, and all others having or pretending to have Right thereto, all and whole [here describe the Lands at Length, and if adjudged under Burdens, &c. use the Form in Schedule (C).], then recite the rest of the Decree of Adjudication or Sale down to the Close of the Warrant to the Notary for giving Infestment, and, if the Infestment is to be taken by the Heir or Assignee of the *Adjudger or Purchaser, or by any other Person acquiring Right through him,* recite here the Decree of Service or the Assignment or other Writ by which the Party has acquired such Right]; by virtue of which Warrant of Infestment I hereby give Sasine to the said *A. B.* of the Lands and others above described. In witness whereof I have subscribed these Presents, written on this and the preceding Pages by *E. F.*, my Clerk, before these Witnesses, the said *E. F.* and *G. H.* my Apprentice.

E. F., Witness.

(Signed) *I.K.*, Notary Public.

G. H., Witness.

APPENDIX,

No. III.

ANNO DECIMO ET UNDECIMO VICTORIÆ REGINÆ,

CAP. XLIX.

An Act to facilitate the Transference of Lands and other Heritages in *Scotland* held in Burgage Tenure.

[25th June 1847.]

Commences 30th September 1847.

The words “And be it enacted,” are to be understood at the beginning of each section.

WHEREAS it is expedient to facilitate the Transference of Lands and other Heritages in *Scotland* held by the Tenure of Burgage, and to render the same less expensive, and for that Purpose to amend the Law of *Scotland* relative thereto: May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen’s most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in all Dispositions and Conveyances, and other Deeds and Instruments necessary for the Transmission of Lands in *Scotland* held by the Tenure of Burgage, in which all or any of the following Clauses are necessarily or usually inserted, (*videlicet*), a Clause declaring the Term of Entry, a Clause of Obligation to infeft, a Procuratory of Resignation, a Clause of Obligation to free and relieve of Cess, Annuity, Ground Annual, and other public, parochial, and local Burdens, a Clause of Assignment of Rents, a Clause of Assignment of Writs and Evidents, a Clause of Warrantice, and a Clause of Registration for Preservation and Execution, it shall be lawful and

In Conveyances of Burgage Property certain Clauses may be inserted in the Forms given in Schedule (A.)

competent to insert all or any of such Clauses in the Form, or as nearly as may be in the Form, set forth in Schedule (A.) hereunto annexed ; and all or any of such Clauses, if so inserted in any such Disposition or Conveyance, or other Deed or Instrument, shall be as valid, effectual, and operative, to all intents and Purposes, as if they had been expressed in the fuller Mode or Form now generally in Use.

Explanation of
the Import of
Clauses in
Schedule (A.)

II. That the Clause of Obligation to infeft expressed as in the Schedule (A.) hereunto annexed shall be held to imply an Obligation on the Disponer to infeft the Disponee, and his Heirs and Assignees, in the Lands or other Heritages conveyed upon their Expenses, and that by Resignation, to be holden of Her Majesty in Free Burgage for Service of Burgh used and wont ; and the Clause of Resignation shall in all respects be held and taken as equivalent to a Procuratory of Resignation in the Terms now in use in regard to Heritable Property held Burgage ; and the Clause of Obligation to free and relieve from Cess, Annuity, Ground Annual, and other public and parochial Burdens shall, unless specially qualified, be held to import an obligation to relieve of all Cess, Annuity, Ground Annual, and other public, parochial, and local Burdens exigible from or on account of the Subjects conveyed prior to the Date of Entry ; and the Clause of Assignment of Rents, unless specially qualified, shall be held to import an Assignment to the Rents to become due for the Possession following the Term of Entry, according to the legal and not the conventional Terms, unless in the Case of forehand Rents, in which Case it shall import an Assignment to the Rents payable at the conventional Terms subsequent to the Date of Entry ; and the Clause of Assignment to Writs and Evidents shall import an absolute and unconditional Assignment to such Writs and Evidents, and to all open Procuratories therein contained to which the Disponer has Right, unless specially qualified ; and the Clause of Warrandice shall, unless specially qualified, be held and taken to imply absolute Warrandice as regards the Lands, and Writs and Evidents, and Warrandice from Fact and Deed as regards the Rents ; and the Clause of Consent to Registration, unless specially qualified, shall import a Consent to Registration, and a Procuratory for Registration in the Books of Council and Session or

other Judges' Books competent, therein to remain for Preservation, and if for Execution, that Letters of Horning and all other necessary Execution shall pass thereon upon a Charge of Six Days upon a Decree to be interponed thereto.

III. That in all Cases where Lands holden Burgage are or shall hereafter be held under a Deed of Entail, it shall be lawful and competent, in Dispositions and Conveyances of such Lands, and in Decrees of Adjudication, Instruments of Resignation and Sasine, and Instruments of Cognition and Sasine, and all other Deeds and Instruments of what Nature soever necessary to transmit, renew, or complete a Title under such Entail in such Lands, to omit the full Insertion of the Conditions and Provisions, and prohibitory, irritant, and resolute Clauses of such Deed of Entail, provided such Conditions and Provisions, and prohibitory, irritant, and resolute Clauses, shall be in such Dispositions and Conveyances, Decrees of Adjudication, Instruments of Resignation and Sasine, and Instruments of Cognition and Sasine, and other Deeds and Instruments aforesaid, specially referred to as set forth at full Length in the recorded Deed of Entail, if the same shall have been recorded in the Register of Tailzies, or if the same shall not have been recorded in such Register, then as set forth at full Length in any recorded Instrument of Resignation and Sasine, or of Cognition and Sasine, forming a Part of the Progress of Title Deeds of the said Lands under the said Entail, such Reference being made in the Terms, or as nearly as may be in the Terms, set forth in Schedule (B.) hereunto annexed; and the Reference thus made to such Conditions and Provisions, and prohibitory, irritant, and resolute Clauses, shall be held as equivalent to the full Insertion thereof, and shall to all Intents and in all Questions whatsoever, whether *inter hæredes* or with Third Parties, have the same legal Effect as if the same had been inserted exactly as they may be expressed in the recorded Deed or Instrument referred to, notwithstanding any Law or Practice to the contrary, or any Injunction to the contrary contained in such Deed of Entail, and notwithstanding the Enactments or Provisions to the contrary contained in an Act of the Parliament of *Scotland* made in the Year One thou-

Conditions of
Entail may be
referred to as
already in the
Register of En-
tails or Regis-
ter of Sasines.

sand six hundred and eighty-five, intituled *Act concerning Tailzies*, or any other Acts of Parliament now in force, all which are hereby repealed to the Extent of making this Enactment operative, but no further.

Real Burdens
may be referred
to as already in
the Register of
Sasines.

IV. That in all Cases where Lands holden Burgence are or shall hereafter be held under any Real Burdens or Conditions or Limitations whatsoever appointed to be fully inserted in the Investitures of such Lands, it shall, notwithstanding such Appointment, and notwithstanding any Law or Practice to the contrary now existing, be lawful and competent in Dispositions and Conveyances of such Lands, Decrees of Adjudication, Instruments of Resignation and Sasine, Instruments of Cognition and Sasine, and other Deeds and Instruments of what Nature soever necessary to transmit, renew, or complete the feudal Title thereto, to omit the full Insertion of such Real Burdens or Conditions or Limitations, provided such Real Burdens or Conditions or Limitations shall, in such Dispositions and Conveyances, Decrees of Adjudication, Instruments of Resignation and Sasine, Instruments of Cognition and Sasine, and other Deeds or Instruments aforesaid, be specially referred to as set forth at full Length in the recorded Instrument of Resignation and Sasine in which the same were first inserted, or in any recorded Instrument of Resignation and Sasine, or of Cognition and Sasine, of subsequent Date, and forming Part of the Progress of Titles of the said Lands, such Reference being made in the Terms, or as nearly as may be in the Terms, set forth in Schedule (C.) hereunto annexed; and the Reference thus made to such Real Burdens or Conditions or Limitations shall be held as legally equivalent to the full Insertion thereof, and to all Intents and in all Questions whatsoever, whether with the Disposer or Superior or Third Parties, shall have the same legal Effect as if the same had been inserted exactly as they may be expressed in the recorded Instrument referred to, notwithstanding of any Law or Practice to the contrary, and notwithstanding of any Act or Acts of Parliament to the contrary, which are hereby repealed to the effect of making this Enactment operative, but no further.

V. And whereas it is expedient to assimilate in certain Cases the Forms of Sasines in Lands holden in Burgage to those used in relation to Lands holden by the other Tenures; be it enacted, That from and after the Thirtieth Day of *September* next it shall no longer be necessary towards obtaining Infestment in Lands holden in Burgage, upon a Disposition or other Deed of Conveyance, or upon a Decree of Adjudication or of Sale, that the Party or a Procurator for the Party obtaining Infestment shall appear before the Provost, or some One of the Bailies of the Burgh in which such Lands are situated, and resign the same into his Hands as into the Hands of Her Majesty, and for such Provost or Bailie to give Sasine to such Party or Procurator, nor shall it be necessary to proceed to the Ground of the Lands, or to the Council Chamber of the Burgh, or to use any Symbol of Resignation or Sasine; and it shall be lawful and competent to resign and obtain Infestment in such Lands by presenting to the Town Clerk of such Burgh, being a Notary Public, such Disposition or other Deed, or such Decree and other necessary Warrants, and by such Town Clerk giving Sasine therein by subscribing and recording an Instrument in the Form and Manner hereinafter mentioned; and the Instrument of Sasine, or of Resignation and Sasine, following on such Disposition or other Deed or Decree, may be expressed in the Form, or as nearly as may be in the Form, of Schedule (D.) to this Act annexed, and it shall be authenticated in the Manner shown in such Schedule; and such Sasine, or Resignation and Sasine, and such Instrument following thereon, shall be as valid and effectual as if the same had been made and received, and given and expressed, in the Mode and Form at present in use, and that notwithstanding of an Act of the *Scottish* Parliament passed in the year One thousand five hundred and sixty-seven, or any other Act of Parliament now in force to the contrary, all which are hereby repealed to the Extent of making this Act operative, but no farther.

VI. That every such Instrument of Sasine, or of Resignation and Sasine, shall be recorded in manner heretofore in use with regard to Instruments of Resignation and Sasine in Burgage Property, and the Town Clerks of Cities and

Burghs are hereby required to register the same accordingly ; and such Instruments of Sasine, or of Resignation and Sasine, being so recorded, shall in all respects have the same Effect as if Resignation had been made and accepted, and Sasine had been given, and an Instrument of Sasine, or of Resignation and Sasine, duly recorded, according to the Law and Practice heretofore in use.

Instruments of Resignation or Sasine may be recorded during Life of the Party in whose Favour such Instruments have been expedite.

VII. That every such Instrument of Sasine, or of Resignation and Sasine, may be competently and effectually recorded at any Time during the Life of the Party in whose Favour such Instrument has been expedite, and the Date of Presentment and Entry set forth on any such Instrument by the Keeper of the Record shall be taken to be the Date of the Instrument of Sasine, or of Resignation and Sasine, and Infetment ; and in case of any Error or Defect in any such Instrument, it shall be competent of new to make and record an Instrument of Sasine, or of Resignation and Sasine, which shall have Effect from the Date of the recording thereof, as if no previous Instrument or Instruments had been made or recorded.

General and special and general special Charges to be no longer competent to be used.

VIII. That it shall no longer be competent to use Letters of general Charge or special Charge, or general special Charge, but in an Action of Constitution of an Ancestor's Debt or Obligation against his unentered Heir the Citation on and Execution of the Summons in such Action shall be held to imply and be equivalent to a general Charge, the Induciae of which shall expire with the Induciae of such Summons, and shall infer the like Certification with such general Charge ; and it shall thereafter be competent to adopt under such Summons the same Procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by Letters of general Charge duly executed against such Heir according to the Law and Practice heretofore in use, which Decree shall be a valid Decree of Constitution ; and in an Action of Adjudication against such Heir following on such Decree of Constitution, or in an Action of Adjudication against an unentered Heir for his own Debt or Obligation, the Citation on and

Execution of the Summons of Adjudication shall be held to imply and be equivalent to a special Charge or general special Charge, as the Circumstances may require, the Induciæ of which Charge shall expire with the Induciæ of such Summons, and shall infer the like Certification with such special Charge or general special Charge, as the Case may be; and it shall thereafter be competent to adopt under such Summons the same Procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by Letters of special Charge or general special Charge, as the Case may be, duly executed against such Heir according to the Law and Practice heretofore in use, which Decree shall be a valid Decree of Adjudication; and in an Action of Constitution and Adjudication combined in the same Summons against an unentered Heir it shall be competent to adopt the same Procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by Letters of general Charge duly executed against such Heir according to the Law and Practice heretofore in use; and in such combined Action of Constitution and Adjudication it shall be competent to pronounce Decree of Constitution and Adjudication in one and the same Interlocutor, and to extract the same in one and the same Extract, which Decree shall be a valid Decree of Constitution and Adjudication, any thing in an Act of the Parliament of *Scotland* passed in the Year One thousand five hundred and forty, and in another Act of the Parliament of *Scotland* passed in the Year One thousand six hundred and twenty-one, or in any other Act or Acts of Parliament, or any Law or Practice, to the contrary notwithstanding, the said Acts being hereby repealed to the Extent of making these Enactments operative, but no further.

IX. That it shall no longer be necessary that a Summons Bill for Summons of Adjudication, or of Ranking and Sale, be preceded by a Bill, such Bill being hereby abolished. monses of Adjudication, &c. dispensed with.

X. And whereas it has been found inconvenient in Practice to libel and conclude for general Adjudication of Lands Unnecessary to libel and con-

clude for Decree of special Adjudication.

as the Alternative only of special Adjudication in Terms of an Act of the Parliament of *Scotland* passed in the Year One thousand six hundred and seventy-two ; be it enacted, That it shall no longer be necessary to libel or conclude for special Adjudication, and it shall be lawful to libel and conclude and decern for general Adjudication without such Alternative, any thing in the said last-mentioned Act or in any other Act of Parliament to the contrary notwithstanding, the said last-mentioned Act and such other Acts being hereby repealed to the Effect of making this Enactment operative, but no further.

Court of Session may make Acts of Sederunt.

XI. That it shall be lawful to the Court of Session to pass such Act or Acts of Sederunt as the Court may deem proper for carrying into effect the Purposes of this Act.

Interpretation of Act.

XII. That in construing this Act, except where the Nature of the Provision or the Context of this Act shall be repugnant to such Construction, the Word "Disponer" shall extend to and include the Disponer's Heirs and Successors ; and the Word "Lands" shall include all other Heritable Subjects ; and all Words used in the Singular Number shall be held to include several Persons or Things, and Words in the Plural shall include the Singular Number ; and all Words importing the Masculine Gender shall extend and be applied to Females as well as Males.

Act to take effect on 30th Sept. 1847.

XIII. That this Act shall take effect from and after the Thirtieth Day of *September* One thousand eight hundred and forty-seven.

Act may be amended, &c.

XIV. That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

SCHEDULES to which the foregoing Act refers.

SCHEDULE (A.)

*After the inductive and dispositive Clauses the Deed may proceed thus:—*With Entry at the Term of [*here specify the Date of Entry*]. And I oblige myself to infest the said [*here insert the Name of the Disponee*] and his foresaids to be holden of Her Majesty in Free Burgage. And I hereby resign the said Lands and others in favour of the said [*here insert the Name of the Disponee*] and his foresaids for new Infestment [*or for new Liferent Infestment, or for new Infestment in Liferent and Fee respectively, as the Case may be*]. And I bind myself to free and relieve the said [*here insert the Name of the Disponee*] of all Cess, Annuity, Ground Annual, and other public and parochial Burdens. And I assign the Rents of the said Lands. And I also assign the Writs and Evidents, and have delivered the same according to Inventory. And I grant Warrantice as accords. And I consent to the Registration hereof for Preservation [*or for Preservation and Execution*]. In witness whereof [*here insert a testing Clause in the usual Form*].

Note.—The Clauses are assumed here as occurring in a Disposition, but they may be used in other Deeds and Instruments; and in the event of its being necessary to omit, vary, or qualify any One or more of them, this may be done, and the other Clauses may be retained.

SCHEDULE (B.)

Instead of inserting the Conditions of Entail at Length these may be referred to as follows; viz.—"But always with and under the Conditions, Provisions, Reservations, and Clauses, prohibitory, irritant, and resolute, specified and contained

in a Disposition and Deed of Entail [or “in the said Disposition and Deed of Entail,” *if it has been previously referred to*], of the said Lands and others made and executed by the deceased *E. F.* [*here mention the Granter of the Entail*], bearing Date the Day of in the Year and recorded in the Register of Tailzies on the Day of in the Year ,” [or “in an Instrument of Sasine in the said Lands and others in favour of *G. H.*, dated and recorded in the Register of Sasines for the Burgh of the Day of in the Year ”].

And in any subsequent Clauses of the Deed, in which it is requisite or usual to refer again to the Conditions of the Entail, the Reference may be made thus:—“But always with and under the Conditions, Provisions, Reservations, and Clauses, prohibitory, irritant, and resolute, before referred to.”

SCHEDULE (C.)

Instead of inserting the Burdens, &c. at Length, these may be referred to as follows ; viz.—“But always with and under the Burdens, Conditions, Provisions, Restrictions, Limitations, and Obligations [or such of these as may apply to the Case] specified and at more Length set forth in an Instrument of Sasine in the said Lands and others” [here describe the Sasine in which the Burdens, &c. were first inserted, or any subsequent Sasine in which they are inserted, forming Part of the Progress of the Titles to the Lands, the Sasine being described by the Name of the Party in whose Favour it was passed, and the Date of Registration in the Burgh Register].

And in any subsequent Clauses, in which it is requisite or usual to refer again to the Burdens, &c., the Reference may be made thus:—“But always with and under the Burdens, Conditions, Provisions, Restrictions, Limitations, and Obligations, [or such of them as may apply to the Case] before referred to.”

SCHEDULE (D.)

At there was by [or on behalf of] *A.B.* [design the Disponee or other Person to whom Sasine is given] presented to me, Notary Public and Town Clerk of the said Burgh subscribing, a Disposition [or other Deed, or an Extract of a Deed, or any other Warrant as the Case may be], granted by *C.D.* [here design the Party Granter of the Deed], and bearing Date the Day of [here describe shortly any connecting Deed or Writ, or Extract thereof, in virtue of which Sasine is given], by which Disposition the said *C.D.* sold, alienated, and disposed to the said *A.B.* [or to *E.F.*, as the Case may be], and his Heirs and Assignees whomsoever, [here insert the Destination, if any], heritably and irredeemably, [or redeemably, in Liferent, or otherwise, as the Case may be], all and whole [here insert the Description of the Subjects conveyed, and any Conditions, Burdens, or Qualifications, or Power of Redemption, or any Reference to the same, as in the Disposition, and if the Disposition by *C.D.* was not to *A.B.* himself, but is vested in him as Assignee, Heir, or Adjudger, or otherwise, in whole or in part, state shortly the successive Transferences, and the Way in which he has Right thereto], which Disposition contains an Obligation to infest the said *A.B.* [or *E.F.*, as the Case may be], to be holden of Her Majesty in Free Burgage, and also contains Procuratory to make Resignation of the said Lands and others in favour of the said Disponee and his foressaids, for new Infestment [or for new Liferent Infestment, or for new Infestment in Liferent and Fee respectively, as the Case may be]. In virtue of which Procuratory the said Lands and others were resigned, and in Terms of the said Disposition I hereby give Sasine to the said *A.B.* of all and whole the foressaid Lands and others [if the Deed contains any Conditions, &c., or any Reference to the same as aforesaid then add, "but always under the Conditions, &c., before specified" or "referred to," as the Case may be]. In witness whereof I have subscribed these Presents, written on this and the preceding

Pages by *G. H.*, my Clerk, before these Witnesses, *I. K.* my Apprentice, and the said *G. H.*

(Motto.) *L. M.*, Notary Public.

G. H., Witness.

I. K., Witness.

Note.—The Notary will sign according to the present Practice, and the Witnesses will sign on the last Page only, and if the Instrument proceeds upon a Decree of Adjudication or of Sale the necessary Changes will be made on the above Form.

APPENDIX,

No. IV.

ANNO DECIMO ET UNDECIMO VICTORIÆ REGINÆ,
CAP. L.

An Act to facilitate the Constitution and Transmission
of Heritable Securities for Debt in *Scotland*, and to
render the same more effectual for the Recovery of
Debts.

[25th June 1847.]

Commences 30th September 1847.

The words “ And be it enacted,” are to be understood at
the beginning of each section.

WHEREAS an Act was passed in the Eighth and Ninth Years
of the Reign of Her present Majesty, intituled *An Act to fa-* 8 & 9 Vict. c. 31.
cilitate the Transmission and Extinction of Heritable Securi-
ties for Debt in Scotland, and it is expedient likewise to fa-
cilitate the Constitution of such Securities, and to render the
same more effectual for the Recovery of Debt; be it there-
fore enacted by the Queen’s most Excellent Majesty, by and
with the Advice and Consent of the Lords Spiritual and
Temporal, and Commons, in this present Parliament assem-
bled, and by the Authority of the same, That from and after
the Thirtieth Day of *September* One Thousand eight hundred
and forty-seven it shall be lawful for any Person entitled
to grant Bond and Disposition in Security in favour of his
Creditors to grant the same in the Form or as nearly as may
be in the Form of Schedule (A.) hereunto annexed; and the
Registration of such Bond and Disposition in Security in the
General Register of Sasines, or Particular Register of Sa-
sines, or Burgh Register of Sasines, as the Tenure of the
Lands embraced in the Security may require, shall be as ef-
fectual and operative to all Intents and Purposes as if such

After 30th
Sept. 1847
Bonds and Dis-
positions in Se-
curity may be
granted in the
Form of Sched-
ule (A.) to this
Act, and regis-
tered in the
Register of
Sasines.

Bond and Disposition in Security had contained, in the Case of Subjects held by the ordinary Tenures, an Obligation to infest *a me vel de me*, Procuratory of Resignation, and Precept of Sasine, and in the Case of Burgage Subjects an Obligation to infest *more Burgi*, and a Procuratory of Resignation, all in the Words and Form now in use, and as if Sasine, or Resignation and Sasine, as the Case may be, had been duly made, accepted, and given thereon in favour of the original Creditor, and an Instrument of Sasine, or of Resignation and Sasine, as the Case may be, had been duly recorded of the Date of the Registration of the said Bond and Disposition in Security as aforesaid.

Explanation of
Clauses in
Schedule (A.)

II. That the Clause of Assignment of Rents to become due or payable shall be held to import an Assignment to Rents from and after the Term from which Interest on the Sum in the Bond commences to run in the fuller Form now generally in use, including therein a Power to the Creditor, on default in Payment, to enter into Possession of the Lands disposed in Security and uplift the Rents thereof, subject to accounting to the Debtor for any Balance of Rents actually recovered beyond what is necessary for Payment of the Creditor; and the Clause of Assignment of Writs shall be held to import an Assignment to Writs and Evidents to the same Effect as in the fuller Form now in use in a Bond and Disposition in Security with Power of Sale; and the Clause of Warrantice shall be held to import absolute Warrantice as regards the Lands and the Title Deeds thereof, and Warrantice from Fact and Deed as regards the Rents; and the Clause consenting to Registration for Preservation and Execution shall import a Consent to Registration and a Procuratory for Registration in the Books of Council and Session, or other Judge's Books competent for Preservation, and that Letters of Horning on Six Days Charge, and all other necessary Execution, may pass on a Decree to be interponed thereto; and the Clause consenting to Registration in the General or Particular or Burgh Register of Sasines shall entitle the Creditor to register the said Bond accordingly, either in the General Register of Sasines, or Particular Re-

gister of Sasines, or Burgh Register of Sasines, as the Tenure of the Lands embraced in the Security may require.

III. That the Clauses reserving Right of Redemption, and obliging the Granter to pay the Expenses of assigning or discharging the Security, and, on default in Payment, granting Power of Sale, shall be in all respects as valid, effectual, and operative as if it had been in such Bond and Disposition in Security specially provided and declared that the Lands and others thereby disposed should be redeemable by the Granter, his Heirs and Successors, from the Grantee and his Heirs and Successors, at the Term and Place of Payment, or at any Term of *Whitsunday* or *Martinmas* thereafter, upon Premonition of Three Months, to be made by the Granter or his foresaids to the Grantee or his foresaids, personally or at their Dwelling Places, if within *Scotland*, and if furth thereof at the Time then at the Office of the Keeper of the Record of Edictal Citations, within the General Register House, *Edinburgh*, in presence of a Notary Public and Witnesses, and that by Payment to them of the whole principal Sum payable under the Bond and Disposition in Security, Interest due thereon, and liquidated Expenses and termly Failures corresponding thereto, if incurred, and in case of their Absence or Refusal to receive the same, by Consignation thereof, in one or other of the Banks in *Scotland*, incorporated by Act of Parliament or Royal Charter, having an Office or Branch at the Place of Payment, to be made furthcoming on the Peril of the Consigner, the Place of Redemption to be within the Office of such Bank or Branch thereof; and as if it had been thereby further provided and declared, that any Discharge and Renunciation, Disposition and Assignation, or other Deed necessary, to be granted by the Grantee or his foresaids, upon the Granter or his foresaids making Payment and redeeming as aforesaid, and also the recording thereof, should always be at the Expense of the Granter and his foresaids; and as if it had been thereby further provided and declared that if the Granter or his foresaids should fail to make Payment of the Sums that should be due by the personal Obligation contained in the said Bond and Disposition in Security within Three Months after a Demand of Pay-

Clauses reserving Right of Redemption, and of Obligation to pay Expense of Assignation or Discharge and Power of Sale, valid, &c.

ment intimated to the Granter or his foresaids, whether of full Age or in Pupillarity or Minority, or although subject to any legal Incapacity, personally, or at their Dwelling Places if within *Scotland*, or if furth thereof at the Office of the Keeper of the Record of Edictal Citations above mentioned, by a Notary Public and Witnesses, then and in that Case it should be lawful to and in the Power of the Grantee or his foresaids, immediately after the Expiration of the said Three Months, and without any other Intimation or Process at Law, to sell and dispose, in whole or in Lots, of the said Lands and others by public Roup, at *Edinburgh* or *Glasgow*, or at the Head Burgh of the County within which the said Lands and others, or the chief Part thereof, are situated, or at the Burgh or Town sending or contributing to send a Member to Parliament which, whether within or without the County, shall be nearest to such Lands, or the chief Part thereof, on previous Advertisement stating the Time and Place of Sale, and published Once weekly for at least Six Weeks subsequent to the Expiry of the said Three Months, in any Newspaper published in *Edinburgh*, and also in any Newspaper published in such County, or if there be no Newspaper published in such County, then in any Newspaper published in the next or a neighbouring County, the Grantee being always bound, upon Payment of the Price, to hold count and reckoning with the Granter or his foresaids for the same, after Deduction of the Principal Sum secured, Interest due thereon, and liquidated Penalties corresponding to both which may be incurred, and all Expenses attending the Sale, and for that end to enter into Articles of Roup, grant Dispositions, containing all usual and necessary Clauses, and in particular a Clause binding the Granter of the said Bond and Disposition in Security, and his Heirs, in absolute Warrandice of such Dispositions, and obliging him and them to corroborate and confirm the same, and to grant all other Deeds and Securities requisite and necessary by the Laws of *Scotland* for rendering such Sale or Sales effectual, in the same Manner and as amply in every respect as the Granter could do himself; and as if it had been thereby further provided and declared that the said Proceedings should all be valid and effectual, whether the Debtor in the said Bond and Dis-

position in Security for the Time should be of full Age, or in Pupillarity or Minority, or although subject to any legal Incapacity, and that such Sale or Sales should be equally good to the Purchaser or Purchasers as if the Granter himself had made them, and also that in carrying such Sale or Sales into Execution, it should be lawful to the Grantee and his fore-saids to prorogate and adjourn the Day of Sale from Time to Time as they should think proper, previous Advertisement of such Adjournment being given in the Newspapers above mentioned Once Weekly for at least Three Weeks ; and as if the Granter had bound and obliged himself and his fore-saids to ratify, approve of, and confirm any Sale or Sales that should be made in consequence thereof, and to grant absolute and irredeemable Dispositions of the Lands and others so to be sold to the Purchaser or Purchasers, their Heirs and Assignees, and to execute and deliver all other Deeds and Writings necessary for rendering their Rights complete.

IV. That in Bonds and Dispositions in Security to be granted in Terms of this Act it shall be lawful and competent, notwithstanding any Declaration to the contrary contained or to be contained in the Rights and Title Deeds of the Lands embraced by the Security, instead of inserting at full Length any Conditions, Reservations, Restrictions, and Provisions under which such Lands and other Heritages are held, to make Reference to the same as set forth at full Length in the recorded Instrument, whether of Sasine or Resignation *ad remanentiam*, in which the same were first inserted, or any other recorded Instrument of Sasine, forming a Part of the Investiture of the Granter of such Security in the said Lands, and which shall contain such Conditions, Reservations, Restrictions, and Provisions at full Length, such recorded Instrument being described by the Name of the Person in whose favour the same was expedite, the Register of Sasines in which the same is recorded, and the Date of recording the same ; and such Reference shall be, to all Intents, and in all Questions whatever, whether with the original Disposer or the Superior, or any other Party, as valid and effectual as if the same had been inserted at Length

Conditions of Granter's Title may be omitted, if referred to as set forth in a recorded Instrument of Sasine.

exactly as they may be expressed in such Instrument referred to.

Bonds and Dispositions in Security, how to be registered in Register of Sasines.

V. That Bonds and Dispositions in Security presented for Registration in the Register of Sasines in pursuance of this Act shall be forthwith shortly registered in the Minute Books of the said Register in common Form, and shall with all due Despatch be fully registered in the Register Books, and thereafter re-delivered to the Parties, with Certificates of due Registration thereon, which shall be probative of such Registration, such Certificates specifying the Date of Presentation, and the Book and Folio in which the Ingrossment has been made, and being subscribed by the Keeper of the Register; and the Date of Entry in the Minute Book shall be held to be the Date of Registration; and Extracts of Writings registered in pursuance of this Act shall make faith in all Cases in like manner as the Writings registered, except where the Writings so registered are offered to be improved.

Bonds and Dispositions in Security may be registered during Lifetime of Grantee, and Title completed after his Death.

VI. That Bonds and Dispositions in Security to be granted as aforesaid may be registered in the Register of Sasines at any Time during the Lifetime of the Grantee, and shall in competition be preferred according to the Date of the Registration thereof: Provided always, that if such Bond and Disposition in Security has not been so registered in the Lifetime of the Grantee, such Bond and Disposition shall be as full and sufficient Warrant of Sasine in favour of the Party having Right to the Bond by Service, Adjudication, or otherwise, as if it had been a Bond and Disposition including Precept of Sasine and other Clauses in the Ordinary Form now in Use; and Infestment being passed upon the same in the Form or as nearly as may be in the Form prescribed by an Act passed in the Session of Parliament holden in the Eighth and Ninth Years of the Reign of Her present Majesty, intituled *An Act to simplify the Form and Diminish the Expense of obtaining Infestment in Heritable Property in Scotland*, and duly recorded, shall be to all Intents and Purposes good and valid Infestment in favour of the Party so infest.

VII. That any Sale duly carried through in Terms of this Act shall be as valid and effectual to the Purchaser as if made by the Granter of the Security himself, and that whether the Granter shall have died before or after such Sale, and without the Necessity of Confirmation by him or his Heirs, and notwithstanding that the Party Debtor in the Security and in Right of the Lands at the Time shall be in Puppillarity or Minority or subject to any legal Incapacity: Provided always, that nothing herein contained shall be held to affect or prejudice the Obligation of the Granter and his Heirs to execute, or the Right of the Creditor or Purchaser to require the Granter and his Heirs to execute, any Deed or Deeds which, independently of this Enactment, would at Common Law be necessary for rendering the Sale effectual, or otherwise completing in due Form the Titles of such Purchaser.

VIII. That the Creditor, upon Receipt of the Price, shall be bound to hold count and reckoning therefor with the Debtor and postponed Creditor, if any such there be, and their Heirs and Assignees, or with any other Party having Interest, and to consign the Surplus which may remain after deducting the Debt secured, with the Interest due thereon and Penalties incurred, and whole Expenses attending such Sale, and after paying all previous incumbrances and the Expense of discharging the same, in one or other of the said Banks, or in a Branch of any such Bank, in the joint Names of the Seller and Purchaser, for Behoof of the Party or Parties having best Right thereto; and the particular Bank in which such Consignation is to be made shall be specified in the Articles of Roup.

IX. That upon a Sale being carried through in Terms of this Act, and upon Consignation of the Surplus of the Price, if any be, as aforesaid, the Disposition by the Creditor to the Purchaser shall have the Effect of completely disencumbering the Lands and others sold of all Securities and Diligences posterior to the Security of such Creditor, as well as of the Security and Diligence of such Creditor himself.

The Act 8 & 9
Vict. c. 31., to
apply to the
Transmission
and Extinction
of Securities
granted under
this Act.

X. That all the Provisions, Conditions, and Enactments contained in the said recited Act shall be held to apply to the Transmission and Extinction of Heritable Securities for Debt in *Scotland*, constituted in Terms of this Act: Provided always, that where, in the Assignations, Writs of Acknowledgment, Discharges, or other Instruments granted under the said recited Act, Reference is thereby directed to be made to the Instrument of Sasine on any Bond and Disposition in Security, it shall be sufficient, in the Case of a Bond and Disposition in Security granted under Authority of this Act, to make Reference to the Date of recording such Bond and Disposition in Security itself in the Register of Sasines.

Fees to be
taken by exist-
ing Town
Clerks of Royal
Burghs and
Keepers of Re-
gisters during
their respective
Rights of Office,
&c.

XI. That nothing herein contained shall be construed to prevent the existing Town Clerks of Royal Burghs in *Scotland*, during the Existence of their respective Rights of Office, from exacting and receiving the same Fees, in respect of recording Bonds and Dispositions in Security under this Act, as the same Town Clerks would before the passing of this Act have been legally entitled to exact or receive on their own Account, in respect of passing the Infestments within Burgh and preparing and recording the Instruments of Sasine and Resignation on said Bonds and Dispositions in Security; provided always, that in computing the said Fees such Instruments of Sasine and Resignation shall not be computed as of greater Length than the Writings actually recorded whereby such Instruments of Sasine and Resignation have been rendered unnecessary; and all other Keepers of Registers of Sasine, during the Existence of their respective Rights of Office, or until otherwise regulated by Law, shall upon the Registration by them of such Bonds and Dispositions in Security, be entitled to the same Fees as such Keeper would have been entitled to upon the Registration of an Instrument of Sasine of the same Length in favour of the same Party in reference to the same Right, and to no other or further Fee whatever.

Court of Session
may make Acts
of Sederunt.

XII. That it shall be lawful to the Court of Session to pass such Acts of Sederunt as the said Court may deem proper for regulating the Register of Sasines, and the Fees to

be paid to the several Keepers thereof for Registrations in virtue of this Act, and generally for carrying out the Purposes of this Act.

XIII. That nothing in this Act contained shall prevent Existing Forms the Establishment of Heritable Securities in the Forms in of Security to be still competent. Use, or which might be competently used, at the passing of tent. this Act.

XIV. That in construing this Act, except where the Na- Interpretation ture of the Provision, or the Context of this Act, shall be of Act. repugnant to such Construction, the Word "Granter" shall extend to and include the Granter's Heirs, Successors, and Representatives; and the Word "Debtor" shall include the Debtor's Heirs, Successors, and Representatives; and the Word "Creditor" shall extend to and include the Party in whose Favour the Bond and Disposition in Security is granted, and his Heirs and Assignees, or other Party acquiring Right to such Security; and the Word "Lands" shall include all other heritable Subjects; and all Words used in the Singular Number shall be held to include several Persons or Things; and all Words importing the Masculine Gender shall extend and be applied to Females as well as Males.

XV. That this Act may be amended or repealed by any Act may be amended, &c. Act to be passed during the present Session of Parliament.

SCHEDULE to which the foregoing Act refers.

SCHEDULE (A.)

I *A.B.* [*here name and design the Granter*] grant me to have instantly borrowed and received from *C.D.* [*here name and design the Creditor*] the Sum of [*insert the Sum*] Sterling; which Sum I bind myself and my Heirs, Executors, and Representatives whomsoever, without the Necessity of discuss-

ing them in their Order, to repay to the said *C.D.* or his Heirs and Assignees whomsoever, at the Term of [*here insert the Date and Place of Payment*], with a Fifth Part more of liquidate Penalty in case of Failure, and the legal Interest of the said Principal Sum from the Date hereof to the said Term of Payment, and half-yearly, termly, and proportionally thereafter during the Not-payment of the same, and that at Two Terms in the Year, Whitsunday and Martinmas, by equal Portions, beginning the first Term's Payment of the said Interest at the Term of next to come, for the Interest due preceding that Date, and the next Term's Payment thereof at following, and so forth, half-yearly, termly, and proportionally thereafter during the Not-payment of the Principal Sum, with a Fifth Part more of the Interest due at each Term of liquidate Penalty in case of Failure in the punctual Payment thereof. And in Security of the personal Obligation before written, I dispoñe to and in favour of the said *C.D.* and his foresaids, heritably, but redeemably as after mentioned, yet irredeemably in the event of a Sale by virtue hereof, all and whole [*here describe the Lands and other Heritages*] (a) and that in Real Security to the said *C.D.* and his foresaids of the whole Sums of Money above written, Principal, Interest, and Penalties. And I assign the Rents; and I assign the Writs; and I grant Warrandice; and I reserve Power of Redemption; and I oblige myself for the Expenses of assigning and discharging this Security; and on default in Payment I grant Power of Sale; and I consent to Registration for Preservation and Execution, and also to Registration in the General or Particular [*or Burgh, as the Case may be,*] Register of Sasines. In witness whereof, &c. [*add a Testing Clause*].

(a) *If the Lands are held under any Conditions, Reservations, Restrictions, and Provisions, say here,—*“ But with and under the whole Conditions, Reservations, Restrictions, and Provisions specified and contained in an Instrument of Sasine, or ‘Resignation ad remanentiam,’ in the said Lands and others, in favour of *E.F.*, recorded in the [*here mention the Register in which the Instrument is recorded*], upon the Day of in the Year .”

APPENDIX,

No. V.

ANNO DECIMO ET UNDECIMO VICTORIÆ REGINÆ,
CAP. LI.

An Act to amend the Practice in *Scotland* with regard
to Crown Charters and Precepts from Chancery.

[25th June 1847.]

Commences 1st October 1847.

The words “ And be it enacted,” are to be understood at
the beginning of each section.

WHEREAS it is expedient to amend the mode presently in
use in *Scotland* of obtaining Charters from Her Majesty and
from the Prince and Steward of *Scotland*, and Precepts from
Chancery for infefting Heirs : May it therefore please Your
Majesty that it may be enacted ; and be it enacted by the
Queen’s most Excellent Majesty, by and with the Advice and
Consent of the Lords Spiritual and Temporal, and Commons,
in this present Parliament assembled, and by the Authority
of the same, That from and after the First Day of *October*
One thousand eight hundred and forty-seven the Practice of
presenting and passing Signatures in Exchequer, and of
thereon framing and issuing Precepts, as preliminary to the
granting of Charters from Her Majesty or the Prince and
Steward of *Scotland*, shall cease and determine ; and it shall
no longer be necessary, in order to the obtaining of any Char-
ter, that such Signature shall be presented and passed, or
such Precept be framed and issued ; and all such Charters
shall be obtained in the Manner directed by this Act, and
not otherwise ; and all Laws, Statutes, and Usages hereto-
fore existing, inconsistent with or at variance with the Pro-
visions of this Act, shall be and are hereby repealed.

M

Charters to be
obtained by
lodging a Draft
thereof and
Note along
with the Title
Deeds.

II. That any Person seeking to obtain a Charter from Her Majesty or from the Prince and Steward of *Scotland* shall lodge or cause to be lodged, in the Office of the Presenter of Signatures, a Draft of the proposed Charter, prepared by his Agent, being a Writer to the Signet, whose Signature shall be endorsed thereon, together with a short Note, in the Terms or to the Effect of the Schedule (A.) hereunto annexed, praying for a Charter in Terms of the said Draft; and the Date of lodging such Note shall be marked thereon by the Presenter of Signatures or his Clerk; and along with such Note and Draft there shall be lodged the last Crown Charter or Prince's Charter, or Retour or Decree of Service, and Precept from Chancery, of the Lands, and all the Title Deeds of the Lands subsequent thereto, together with Evidence of the valued Rent when necessary, and an Inventory and Brief of the Titles according to the present Practice.

Draft Charter
to be revised.

III. That the Draft Charter so lodged shall be forthwith revised by the Presenter of Signatures, who shall require the Attendance of the Agent of the Person applying for the Charter, for the Purpose of receiving his Explanations; and the Presenter of Signatures shall thereafter proceed with the Revision of the said Draft, making such Alterations and Corrections as are necessary, and he shall after his final Revisal of such Draft, authenticate each Page thereof, and the several Alterations and Corrections thereon, if any, with his Initials, and shall mark on such Draft that the same has been revised by him, and also the date when such Revisal was completed; and the Fees on Signatures presently payable to the Presenter of Signatures shall be chargeable on the Draft Charter to be lodged and revised as aforesaid, and all other Fees presently payable to the Officers of Exchequer on Signature shall cease and determine.

Rectification of
Mistakes in
former Titles.

IV. That if it shall appear that any Mistake has occurred in the Terms of the last Charter or Retour or Decree of Service to the Prejudice of the Crown or Prince, the Person applying for the Charter shall farther, on Requisition made to him or his Agent to that Effect, by Order of the Presenter

of Signatures, lodge the prior Title Deeds of the said Lands, and any other Title Deeds of and concerning the same, in so far as such Title Deeds may be in his Possession or at his Command, and in so far as the same may be necessary for the due Revisal of the said Draft on behalf of Her Majesty or the Prince, and the Rectification of such Mistake, which may be rectified accordingly; and on the other hand, if the Vassal shall allege any Mistake to have occurred in the Terms of the last Charter or Retour or Decree of Service to his Prejudice, the Person applying for the Charter shall be entitled, without such Requisition, to produce the Prior Titles of the said Lands, and any other Title Deeds or other Deeds of and concerning the same, in so far as these may be necessary for the due Revisal of the said Draft and the Rectification of such Mistake, which may be rectified accordingly; but no such Rectification shall in either Case be allowed, nor the Draft be held as finally revised or authenticated as such, until the same shall have been reported by the Presenter of Signatures to and approved of by the Judges performing the Duties of the Court of Exchequer, in Terms of an Act passed in the Second and Third Years of the Reign of her Majesty, for regulating the Duties to be performed in the Supreme Courts of *Scotland*, or One of the said Judges.

V. Provided always, and be it enacted, That when the last Charter or Retour or Decree of Service shall be withheld by the Person applying as aforesaid, or cannot be so lodged from being in the Possession of the Proprietor of other Lands therein contained, or from any other good Cause, it shall be competent for the Presenter of Signatures, or for the Person applying as aforesaid, to refer to the Copy thereof engrossed in the Register of the Great Seal, or in the Register of Retours or Decrees of Service, and to procure Exhibition thereof as Evidence of the Terms of such last Charter or Retour or Decree of Service; and the Lord Clerk Register is hereby authorised and required to make such Regulation as will enable the Exhibition thereof to be obtained for the Purpose aforesaid, upon the joint Application of the Person so applying and of the Presenter of Signatures.

Presenter of
Signatures, &c.
may refer to
Copy of Char-
ter, &c. when
withheld.

Amount of
Crown Duties
to be fixed.

VI. That the Presenter of Signatures shall also, with the Aid of the Auditor of Exchequer, ascertain and fix the Amount of Composition or other Duties due and payable to Her Majesty or the Prince on granting such Charter, and the Amount of the same shall be marked on the said Draft, and certified by the Signatures of the said Auditor of Exchequer and of the Presenter of Signatures ; and in ascertaining and fixing the Amount of such Composition and other Duties payable to the Crown there shall be no charge added for the Expence of collecting the same, any Law or Practice to the contrary notwithstanding.

Clerk's Fees.

VII. That the Person applying for such Charter shall be bound to pay to the Clerk of the Presenter of Signatures the Fees to be fixed in manner hereinafter provided ; and which Fees shall be paid over by such Clerk to the Director of Chancery, who shall be accountable therefor.

Copy of revised
Draft to be
furnished to the
Party.

VIII. That such revised Draft shall be retained in the Office of the Presenter of Signatures, and shall be there open to the inspection of the Party applying for the Charter or his Agent, and a Copy thereof shall be furnished on Demand, on Payment of the Fees to be fixed as hereinafter directed.

If no Objections,
the revised
Draft to be at-
tested, and the
Charter pre-
pared.

IX. That where no Objections shall be stated to the Draft as so revised a Docquet shall be put thereon, certifying that the same is approved, which Docquet shall be signed by the Agent applying for the Charter and by the Presenter of Signatures, and the Date of signing the same thereon set forth ; and such Draft so docqueted shall, without being given up to the Party applying for the Charter or his Agent, be officially transmitted by the Presenter of Signatures to the Office of the Director of Chancery, and shall form a valid and sufficient Warrant for the immediate Preparation of the Charter in Chancery, in Terms of such Draft.

Charters may
be applied for
at any Time.

X. That it shall be competent to apply for the Charter in manner before directed, and to revise the Draft of the same, and in the event of the same being docqueted as revised and approved in manner aforesaid, to prepare and deliver the

Charter as hereinafter directed, at any Period of the Year, and notwithstanding that it shall not then be Term Time of the Court of Exchequer.

XI. That it shall be lawful for the Person applying for the Charter, if dissatisfied with the Draft revised as aforesaid, to state Objections thereto or against the Amount of Duties and Composition thereon marked as payable ; and such Objections shall be set forth in a short written Note of Objections, without Argument, to be lodged in the Office of the Presenter of Signatures, subscribed by the Agent of such Person ; and the Date of lodging such Note of Objections shall be marked thereon by the Presenter of Signatures or his Clerk.

XII. That where any Note of Objection shall be so lodged, such Note shall, together with the whole other Proceedings, be laid before the said Judges, or any One of the said Judges ; and the said Judges or Judge shall hear the Person so objecting by himself, his Counsel or his Agent, being a Writer to the Signet, and shall also hear any Report or Statement by the Presenter of Signatures ; and wherever it shall appear to the said Judges or Judge that the said Objections should to any Extent receive Effect, they or he shall cause such Alterations and Corrections as shall appear to them or him proper, either with reference to the Terms of the said Draft, or to the Amount of Duties or other Payments marked thereon as payable, to be made on such Draft, or to be expressed in a separate Paper marked as relative thereto, and shall authenticate such Draft and relative Paper with their or his Signature ; and the said Judges or Judge shall at the same Time pronounce a Judgment or Deliverance, to be written on the Note of Objections, appointing the Charter, as so altered and corrected, to be prepared and executed ; and the Judgment or Deliverance so pronounced shall form a valid and sufficient Warrant for the Preparation in Chancery of the Charter as altered and corrected.

XIII. That wherever the said Judges or Judge shall be of opinion that the said Objection should not to any Extent

Objections, if
any, to be by a
Note.

Objections how
to be disposed
of.

Procedure if
Objections re-
pelled.

receive Effect, they or he shall pronounce a Judgment, to be written on the said Note of Objections, repelling the said Objections ; and the Judgment or Deliverance so pronounced shall form a valid and sufficient Warrant for the Preparation in Chancery of the Charter as revised by the Presenter of Signatures in manner before directed.

Refusal to revise, how to be complained of.

XIV. That wherever the Presenter of Signatures aforesaid shall be of opinion that the Person applying for the Charter has not produced a Title sufficient to shew that he has Right to obtain the same, the Presenter of Signatures shall mark on the said Draft that the same is refused for Want of sufficient Production of Titles, adding thereto his Signature and the Date of affixing the same ; and his Clerk shall intimate such Refusal to the Agent of the said Person, and shall, on Demand, return the Draft to such Agent ; and in every such Case it shall be competent for the Person who shall have applied for the Charter to bring such Refusal under Review of the said Judges or Judge by a Note of Objection lodged in manner aforesaid ; and the said Judges or Judge shall, after considering such Note, and hearing Parties thereon in manner aforesaid, sustain or repel the Objection, or pronounce such Judgment thereon as shall be just ; and if the said Judges or Judge shall be of opinion that a sufficient Title has been shewn to authorise the Charter being granted, they or he shall in that Case remit to the Presenter of Signatures to proceed with the Revisal of the Draft in manner before mentioned.

Charter as revised to be ingrossed and delivered.

XV. That so soon as the Draft shall have been docqueted as revised and approved in manner before provided, or, in case of Objections being stated, as soon as the same shall have been disposed of by the Judges or Judge in Exchequer in manner before directed, it shall be lawful immediately thereafter to have the Charter ingrossed in the Office of Chancery aforesaid, in Terms of the Draft as finally adjusted and officially transmitted to the Director of Chancery ; and the said Charter shall have the Seal appointed by the Treaty of Union to be kept and used in *Scotland* in place of the Great Seal thereof formerly in use affixed thereto, or the Seal of

the Prince if the Charter be of Lands holden of the Prince, and a separate Seal be then in use for such Charters, and shall be recorded in Chancery, and thereafter delivered to the Person applying for the same, or his Agent, in like Manner in all respects, and on Payment of the same Fees and Charges, as at present used and observed and payable, and the Date of sealing shall in all Cases be held and expressed to be the Date of the Charter: Provided always, that before the Charter shall be so delivered Payment shall be made to the Officers who are or may be entitled to receive the same of the Amount of Duties and Compositions payable to Her Majesty or the Prince, ascertained and fixed as aforesaid: and a Record of the Amount of Duties payable to Her Majesty or the Prince shall be kept in Chancery, so as to form a Charge against the Officer or other Person appointed to receive the same.

XVI. That the Charter, ingrossed, sealed, recorded, and delivered as aforesaid, shall be in all respects as valid and effectual, and form an equally sufficient Warrant for Infeftment passing thereon, as any Charter of the same Description hitherto in use to be granted by Her Majesty or the Prince and Steward of *Scotland*, notwithstanding that the same has not followed on any signature presented and passed in Exchequer or Precept directed thereon, any Law or Usage heretofore existing to the contrary notwithstanding.

XVII. That in every Case in which a Charter of Resignation by Her Majesty or the Prince and Steward of *Scotland* is applied for, it shall not, from and after the Date aforesaid, be necessary to go through any Form or Ceremony of Resignation, but in all Cases Resignation shall be held to be duly made and completed in Terms of the Procuratory of Resignation by the ingiving of the Note applying for the Charter as aforesaid, and as of the Date of such ingiving; and the Charter of Resignation shall set forth that Resignation was made of the Date of applying for the same, without the Necessity of specially setting forth such Date, and shall otherwise deduce the Titles according to Law; and every such Charter of Resignation shall be as valid and effectual,

Ceremony of
Resignation
abolished.

and form an equally sufficient Warrant for Infetment passing thereon, as any Charter of Resignation heretofore granted by Her Majesty or the Prince, any Law or Usage to the contrary notwithstanding.

Precepts from
Chancery to
Heirs specially
served, how to
be obtained.

XVIII. That from and after the Date aforesaid, when any Person who has obtained himself specially served as Heir to a deceased Ancestor, or Decree of special Service, shall seek to obtain a Precept from Chancery for infetting himself as such Heir, he shall in like Manner as before directed lodge or cause to be lodged in the Office of the Presenter of Signatures the Retour or Decree of his special Service, and a Draft of the proposed Precept, prepared by his Agent, being a Writer to the Signet, in the Form, or as nearly as the Case will admit, of the Schedule (B.) hereunto annexed, together with a Note in the Terms or to the Effect before directed, and the last Charter or Charters or Retour or Decree of Service and other Titles of the Lands as aforesaid, and the said Draft shall be revised by the Presenter of Signatures on behalf of the Majesty or the Prince and Steward of *Scotland* in manner aforesaid; and all the Provisions hereinbefore contained with regard to Drafts of Charters from Her Majesty or the Prince and Steward of *Scotland* shall be and the same are hereby made applicable to such Drafts of Precepts; and the Draft of such Precept, when docquetted as revised and approved in manner before provided, or, in the Case of Objections, the Judgment or Deliverance of the Judges or Judge in Exchequer aforesaid, shall, when officially transmitted to the Office of the Director of Chancery in manner aforesaid, form a valid and sufficient Warrant for the Preparation in Chancery of the Precept in Terms of the Draft as finally corrected and approved, and the same shall forthwith be ingrossed in the Office of Chancery aforesaid, and after being recorded in manner hereinafter directed shall be delivered to the Person applying for the same, in like Manner, and on Payment of the same Fees and Charges, as at present used and observed and payable; and the Precept so ingrossed and delivered shall be in all respects as valid and effectual, and form an equally sufficient Warrant for Infetment passing thereon, as any the

like Precept issued from Chancery according to the Mode presently in use : Provided always, that before the Precept is so delivered Payment shall be made of the Amount of Duties and Composition payable to the Crown or Prince, as the same shall have been fixed in manner above mentioned.

XIX. That from and after the Date foresaid it shall not be necessary that any Precept from Chancery for infefting Heirs shall proceed, as heretofore, exclusively on special Service in the particular Lands for Infetment in which such Precept is sought, but it shall be competent for any Person to apply for and obtain such Precept on lodging, along with the Charter or Charters or other Title as aforesaid, an Extract Retour or Decree of general Service, duly expedite and recorded, instructing the Propinquity of such Person to the Party who died last vest and seised in the Subjects, or the Character of Heir otherwise vested in him, and establishing his Right to succeed to the said Lands ; and the Precept granted on Production of such Extract Retour or Decree of general Service shall be expressed in the Form, or as nearly so as the Case will admit, of the said Schedule (B.), and shall be applied for, revised, and obtained in like Manner as hereinbefore directed in regard to Charters, and the Infetment passing on such Precept shall be as valid and effectual as the Infetment passing on any Precept for infefting Heirs hitherto in use to be issued from Chancery.

Precepts may also be granted to Heirs holding only a general Service.

XX. That from and after the Date foresaid the Director of Chancery, or his Depute or Substitute, shall record or cause to be recorded at full Length every Precept, whether of Crown or Principality Lands, issued from Chancery for infefting Heirs, in a Book or Books to be kept exclusively for that Purpose, intituled "The Record of Precepts ;" and Extracts from the said Record, certified by the Director of Chancery, or his Depute or Substitute, shall make entire Faith in all Cases, except in case of Improbation.

Record of Precepts to be kept.

XXI. That it shall be competent to apply for and obtain, in manner before mentioned, a Charter of Confirmation from Her Majesty or the Prince and Steward of *Scotland*, com-

Charters of Confirmation may be granted, combined with Precepts for infefting Heir.

bined in the same Deed with a Precept for infesting Heirs as aforesaid ; and in every Case in which such Charter and Precept are contained in the same Deed it shall be sufficient for the Validity of the said Deed that it pass under the Seal appointed by the Treaty of Union to be used in place of the Great Seal or the Seal of the Prince, as the Case may be, and if his separate Seal be then in use for such Charters as aforesaid, in like Manner with the Charter of Confirmation when contained in a separate Deed.

Charters of
Novodamus,
how to be ob-
tained.

XXII. Provided always, and be it enacted, That in every Case in which a Charter of Novodamus, or a Charter containing any New or original Grant, shall be sought, the Person applying for the same shall, previously to lodging the Note before mentioned in the Office of the Presenter of Signatures, obtain the Consent and Approbation of the Commissioners of Her Majesty's Woods and Forests, or any Two of them, and written Evidence of such Consent shall be produced along with the Note to be lodged as aforesaid in the Office of the Presenter of Signatures ; and the Charter shall be revised and ingrossed as in the ordinary Case, but the same, before being sealed, shall be lodged with the Queen's and Lord Treasurer's Remembrancer, and be by him transmitted for the Sign Manual of Her Majesty, and the Signatures of the Lord High Treasurer or of the Commissioners of Her Majesty's Treasury, or any Three of them, and in case such Charter be of Lands holden of the Prince and Steward of *Scotland*, and His Royal Highness be then of full Age, for the Consent and Approbation of the Prince, signified under his Sign Manual, after which the proper Seal shall be attached to such Charters, and the other Procedure be as is provided in regard to Charters from the Crown and Prince generally.

Lodging Draft
Charter with
Note and re-
cording Note to
be equivalent,
in competition,
to presenting a
Signature and
recording Ab-
stract.

XXIII. That the lodging of a Draft of a proposed Charter, together with a short Note in Terms or to the Effect of Schedule (A.) hereunto annexed, praying for a Charter in Terms of such Draft, shall, in competition of Diligence and all other Cases, be deemed and held to be equivalent to the presenting of a Signature in Exchequer ; and recording a

Copy of such Note, and an Abstract of such Draft Charter, in the Register of Abbreviates of Adjudications, shall be deemed and held to be equivalent to recording in the said Register an Abstract of such Signature.

XXIV. That from and after the First Day of *October* One thousand eight hundred and forty-seven all Crown Charters, and Charters by or on behalf of the Prince and Steward of *Scotland*, if the same be Charters of Resignation, may be in the Form, as nearly as the Case will admit, given in Schedule (C.), No. 1., hereunto annexed, and if the same be Charters of Confirmation, may be in one or other of the Forms, or as nearly as the Case will admit, given in the said Schedule (C.), No. 2. and 3, and if the same be Charters of any other Denomination or Nature, they may be in Forms as nearly approaching as may be to the Examples given in the said Schedule (C.); and such Charters, when granted in these Forms, or as nearly as may be in these Forms, shall have the same Force and legal Effect in all respects as if the same had been granted in the Forms now in use, and shall be read and construed as largely and beneficially in all respects for the Holders thereof as if the same had been expressed in and had contained the whole Terms and Words which are now used according to the present Practice in granting such Charters.

XXV. That from and after the Date aforesaid all Charters granted by Her Majesty or the Prince and Steward of *Scotland*, and the Instruments of Sasine following thereon, and all Precepts from Chancery for infefting Heirs, and Instruments of Sasine thereon, shall be expressed in the *English* Language.

XXVI. That in all Cases where Lands are or shall be held under a Deed of Entail, it shall be lawful and competent, in the Charters and Precepts containing such Lands, and the Instruments of Sasine following on such Charters and Precepts respectively, to omit the full Insertion of the Conditions and Provisions, and prohibitory, irritant, and resoluteive Clauses of such Deed of Entail, provided such Conditions and Provisions, and prohibitory, irritant, and resoluteive Clauses,

shall be in such Charters, Precepts, and Instruments of Sasine specially referred to as set forth at full Length in the recorded Deed of Entail, if the same shall have been recorded in the Register of Tailies, or as set forth at full Length in any recorded Instrument of Sasine forming Part of the Progress of Title Deeds under the said Entail, such Reference being made in the Terms, or as nearly as may be in the Terms, directed in Schedule (C.) hereunto annexed, and the Reference thus made to such Conditions and Provisions, and prohibitory, irritant, and resoluteive Clauses, shall be held to be equivalent to the full Insertion thereof, and shall to all Intents, and in all Questions whatever, whether *inter hæredes* or with Third Parties, have the same legal Effect as if the same had been inserted exactly as they may be expressed in the recorded Deed or Instrument referred to, notwithstanding any Law or Practice to the contrary, or any Injunction to the contrary, contained in such Deed of Entail, and notwithstanding the Enactments or Provisions to the contrary contained in an Act of the Parliament of *Scotland* made in the Year One thousand six hundred and eighty-five, intituled *Act concerning Tailzies*, or any other Act of Parliament now in force, all which are hereby repealed to the Extent of making this Enactment operative, but no further.

Real Burdens
may be refer-
red to as al-
ready in the
Register of Sa-
sines.

XXVII. That in all Cases where Lands or other Heritages are or shall be held under any Real Burdens or Conditions or Limitations whatsoever appointed to be fully inserted in the Investitures of such Lands, it shall, notwithstanding such Appointment, and notwithstanding any Law or Practice to the contrary now existing, be lawful and competent in Charters and Precepts containing such Lands, and the Instruments of Sasine following upon such Charters and Precepts respectively, to omit the full Insertion of such Real Burdens or Conditions or Limitations, provided that such Real Burdens or Conditions or Limitations shall in such Charters or Precepts or Instruments of Sasine be specially referred to as set forth at full Length in the recorded Instrument, whether of Sasine or of Resignation *ad remanentiam*, wherein the same were first inserted, or in any recorded Instrument of Sasine of subsequent Date, forming

Part of the Progress of Titles of such Lands, such Reference being made in the Terms or as nearly as may be in the Terms directed in Schedule (C.) hereunto annexed, and the Reference thus made to such Real Burdens or Conditions or Limitations shall be held to be equivalent to the full Insertion thereof, and shall to all Intents and in all Questions whatever, whether with the Disponer or Superior or Third Parties, have the same legal Effect as if the same had been inserted exactly as they may be expressed in the recorded Instrument referred to, notwithstanding any Law or Practice to the contrary, and notwithstanding any Act or Acts of Parliament to the contrary, which are hereby repealed to the Effect of making this Act operative, but no further.

XXVIII. That the Judges performing the Duty of the Court of Exchequer as aforesaid shall be and they are hereby authorised from Time to Time to frame and enact, by Rule of Court, all such Regulations as shall seem to them proper for giving Effect to the Purposes of the present Act; and the said Judges shall forthwith frame and enact a Rule of Court fixing and determining the Fees to be paid on the various Writs, Steps of Procedure, and other Matters herein and hereby authorised; but such Rule of Court shall be subject to their own Revision at any Time or Times thereafter.

Exchequer
Judges to frame
Regulations.

XXIX. That the Presenter of Signatures shall, when authorised and required by the Lord Justice General and President of the Court of Session, discharge the Duties at present or which may hereafter be attached to the Office of Sheriff of Chancery, or any Part of these Duties, and that during such Part of the Year as may be required of him, and shall for that Purpose possess all Powers and Jurisdiction vested in such Sheriff of Chancery.

Presenter of
Signatures, if
required, to
discharge Du-
ties of Sheriff.

XXX. And in respect that considerable additional Duties are by this Act required to be performed by the Presenter of Signatures, be it enacted, That the Presenter of Signatures shall receive in consideration thereof such additional Salary as may be allowed by the Lord High Treasurer, or the Commissioners of Her Majesty's Treasury, or any Three or more

Additional
Allowance to
Presenter of
Signatures.

of them, which additional Salary shall be payable out of the same Fund from which the Salary of the Presenter of Signatures is at present paid.

Salary to be regulated by Commissioners of the Treasury, when Vacancy occurs.

XXXI. That whenever any Vacancy shall occur in the Office of Presenter of Signatures it shall be lawful to the Commissioners of Her Majesty's Treasury, or any Three or more of them, to regulate the Salary of the Presenter of Signatures, as the then Circumstances of the Office may require.

Compensation, how to be applied for.

XXXII. That it shall be lawful for any Person who conceives that he is entitled to Compensation for Loss to be suffered through the Operation or Effect of this Act to make Application to the Lord High Treasurer, or to the Commissioners of Her Majesty's Treasury of the United Kingdom of *Great Britain and Ireland*, for the Time being, claiming such Compensation; and it shall be lawful for the said Lord High Treasurer or Commissioners of the Treasury to investigate such Claim, and call for such Evidence in relation thereto as he or they may think necessary, and upon such Claim being established to his or their Satisfaction, the said Lord High Treasurer, or Commissioners of Her Majesty's Treasury, or any Three of them, is and are hereby authorised and empowered to award to such Person such Compensation as he or they shall think him entitled to, either by the Payment of a gross Sum or by way of Annuity, as he or they shall think proper: Provided always, that a Copy of every such Award for Compensation shall be laid before both Houses of Parliament within Ten Days from the Date thereof if Parliament shall be then sitting, and if not, then within Ten Days after the Commencement of the Session next ensuing; and no such Award shall be final and conclusive until Two Calendar Months after the same shall have been so laid before Parliament: Provided also, that if any Person to whom Compensation shall be so awarded by way of Annuity shall be afterwards appointed to any other public Office, such Compensation shall be accounted *pro tanto* of the Salary payable to such Person in respect of such other Office while he shall continue to hold the same.

XXXIII. That the several Compensations which may be ^{Compensation} awarded under the Authority of this Act shall be payable and ^{how to be paid.} paid out of the Monies which, by the Acts of the Seventh and Tenth Years of the Reign of Her Majesty Queen *Anne*, were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, or Exchequer in *Scotland*.

XXXIV. That, notwithstanding any thing in this Act con- ^{Power to Prince} tained, it shall be lawful for the Prince and Steward of *Scot-* ^{and Steward} *land*, being of full Age, at any Time or Times hereafter to ^{of Scotland to} appoint His own Presenter of Signatures, and other Officer ^{own Presenter} or Officers of Exchequer and Chancery, to discharge, in re- ^{of Signatures,} ^{&c.} gard to all Charters and Precepts to Heirs of Lands holden of Him, the Duties hereby assigned to the Presenter of Signatures and other Officers of her Majesty's Exchequer and Chancery respectively; and in case of the Office of Presenter of Signatures or any such other Office in Exchequer or Chancery as aforesaid for the Prince being conferred on the Person holding the corresponding Office for the Crown, such Officer shall be bound to act for the Prince without additional Salary; and the Fees hereby authorised to be levied in respect of all Charters and Precepts to Heirs from the Prince shall in that Case be paid into the Consolidated Fund, but if any such Appointment by the Prince shall be conferred upon a different Person, the Person so appointed shall draw for his own Use such of the said Fees as shall arise from the Duties performed by him in respect of such Charters and Precepts.

XXXV. That the following Words and Expressions in ^{Interpretation} this Act shall have the several Meanings hereby assigned to ^{of Act.} them, unless there be something in the Subject or Context repugnant to such Construction; (that is to say,)

Words importing the Singular shall include the Plural Number, and Words in the Plural shall include the Singular Number:

Words importing the Masculine Gender shall include Females:

The Word "Lands" shall extend to and include Houses,

Mills, Fishings, Teinds, Patronages, Lands, Tenements, and Heritages of every Description held of the Crown or of the Prince of *Scotland*.

Act may be amended, &c.

XXXVI. That this Act may be amended or repealed by any Act to be passed during the present Session of Parliament.

SCHEDULES to which the foregoing Act refers.

SCHEDULE (A.)

Note for A. B. [insert Name and Designation.]

The said *A. B.* humbly prays, that a Charter [*or Precept, or other Deed as the Case may be*], may be granted by Her Majesty [*or the Prince and Steward of Scotland, as the Case may be*], in Terms of the Draft herewith lodged, and marked as relative hereto.

(Signed) *C. D.* (W.S.) Agent for the said *A. B.*

SCHEDULE (B.)

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith : Whereas by Decree of General Service or " of Special Service," *as the Case may be*, of *A. B.* [*here insert the Name and Designation of the Heir*], dated [*here insert the Date of the Decree*], and recorded in Chancery [*here insert the Date of Registration*], and other authentic Instruments and Documents, it clearly appears that *C. D.* [*here insert the Name and Designation of the Ancestor*], died last vest and seised as of Fee in [*here describe the Lands, &c., and when there*

are Conditions of Entail, here insert them, or make a competent Reference to them, and describe the Deed of Entail or other Deed of Provision by Date, and Date of Registration, and insert the Destination, and where there are any other Burdens or Qualifications here insert or make a competent Reference to them, as directed in Schedule (C.)], and that in virtue of [here describe the Charter and Sasine, or Precept and Sasine, or other Deeds forming the last Investiture, by Dates, and Dates of Registration], and that the said A.B. is eldest Son and nearest and lawful Heir of the said C.D. [or whatever Relationship and Character of Heir the Party holds, here state it,] in the said Lands and others, and that the said Lands and others are holden of Us and Our Royal Successors [here state the Tenure, Blench Feu or other], for Payment [here state the Reddendo from the last Charter]; therefore We desire any Notary Public to whom these Presents may be presented to give to the said A.B., as Heir foresaid, Sasine of the Lands and others before described [if there are Conditions of Entail, &c., or other Burdens or Qualifications, here add, but always with and under the Conditions, Provisions, and Clauses prohibitory, irritant, and resolute, or with and under the Burdens or Qualifications, as the Case may be, above specified or referred to, as the Case may be].
 Given at Edinburgh, the Day of in the
 Year

*Signed by the Director of Chancery, or his
 Depute or Substitute.*

Note to Schedule (B.)—When the Precept is to be granted by or on behalf of the Prince and Steward of Scotland it will be in similar Form, but will run in Name of the Prince and Steward of Scotland, without adding his Highness's other Titles, or will run in Name of Her Majesty as his Administrator; and the Lands, instead of being described as holding of the Crown, will be described as holding of the Prince and Steward of Scotland.

SCHEDULE (C.)

No. 1.

Form of Crown Charter of Resignation.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith : We do hereby give, grant, and dispo, and for ever confirm, to A.B. and his Heirs and Assignees whomsoever (a), heritably and irredeemably, all and whole [*here insert the Lands or other Heritages (b)*], which Lands and others above written formerly belonged to C.D., holden by him immediately of the Crown, in Terms of [*here state briefly the Titles of the last Vassal, whether a Precept and Sasine, or Charter and Sasine, and so forth*], and have been resigned by him into our Hands by virtue of a Procuratory of Resignation contained in a Disposition of the said Lands and others granted by him in favour of the said A.B., dated [*here insert the Date*], to be holden, the said Lands and others, of the Crown, in Free Blench Farm (c) [*or "in Feu Farm"*] for ever, paying therefor a Penny Scots yearly of Blench Duty, if asked only [*or if held in Feu, here specify the Feu Duty and other Services*]. Moreover, We desire any Notary Public to whom this Charter may be presented, to give to the said A.B. or his foresaids Sasine of the Lands and others above described. In witness whereof, We have ordered the Seal now used for the Great Seal of Scotland to be appended hereto of this Date, and the same is accordingly appended at Edinburgh, the Day of [*state the Day, Month, and Year*].

(a) Or in case there be a Substitution of Heirs, here insert it at full Length.

(b) In case there be any Conditions of Entail, or any Real Burdens, Restrictions, or Qualifications of any Kind, proper to be inserted or referred to, insert them here, immediately after the Description of the Lands, &c., or refer to them stating Date and Date of Registration, as at length set forth in the Deed of Entail as recorded in the Register of Tailzies,

or in some previous Instrument of Sasine, or of Resignation *ad remanentiam*, duly registered.

(c) If the Lands were held formerly in Ward, say here, "in Free Blench as in room of Ward," and in the Reddendo say, "a Penny Scots yearly, as in room of the Ward Duties."

No. 2.

First Form of Crown Charter of Confirmation.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: We do hereby confirm for ever, to and in favour of *A.B.* and his Heirs and Assignees whomsoever (*a*), a Disposition granted by *C.D.* to the said *A.B.*, and dated the Day of _____ whereby the said *C.D.* disposed to the said *A.B.* and his foresaids, heritably and irredeemably, all and whole [*here describe the Lands or other Heritages at length (b)*], which Disposition contains an Obligation to infest *a me vel de me*, and a Precept of Sasine, as also an Instrument of Sasine in favour of the said *A.B.* following on the said Disposition, and recorded in the [*here describe the Register in which the Instrument is recorded*] on the _____ Day of _____ [*if there are more Documents than Two to be confirmed, here describe them consecutively, and for the sake of Distinctness, the Description of each Document confirmed may be preceded with a Number, First, Second, &c.*] or of whatever other Dates and Tenor the said several writs may be, to be holden, the said Lands and others, of the Crown, in Free Blench (*c*) [*or in Feu Farm*] for ever, paying therefor a Penny Scots yearly of Blench Duty, if asked only [*or if held in Feu Farm, specify the Feu Duty and other Payments and Services*]. In witness whereof We have ordered the Seal now used for the Great Seal of Scotland to be appended hereto of this Date, and the same is accordingly appended at Edinburgh, the _____ Day of _____ [*state the Day, Month, and Year*].

(*a*) In case there be a Substitution of Heirs, here insert it at full Length.

(b) In case there be any Conditions of Entail, Real Burdens, Restrictions, or Qualifications of any Kind, either proper to be inserted or referred to, insert them here, immediately after the Description of the Lands, &c., or refer to them as above (No. 1).

(c) If the Lands were held formerly in Ward, say here, "in Free Blench as in room of Ward."

No. 3.

Second Form of Crown Charter of Confirmation.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: We do hereby confirm for ever, to and in favour of A.B. and his Heirs and Assignees whomsoever, heritably and irredeemably (a), all and whole [*here insert the Lands or other Heritages to be confirmed*] (b), and the following Deeds and Instruments [*or other Writings*], in so far as they relate to the Lands and others hereby confirmed [*here describe the Deeds, Instruments, or other Writings to be specially confirmed*], or of whatever other Dates and Tenor the said several Writs may be, to be holden, the said Lands and others, of the Crown, in Free Blench (c) [*or "in Feu Farm"*] for ever, paying therefor a Penny Scots yearly of Blench-Duty, if asked only [*or if held in Feu Farm, specify the Feu-Duty and other Payments and Services*]. In witness whereof, We have ordered the Seal now used for the Great Seal of Scotland to be appended hereto of this Date, and the same is accordingly appended at Edinburgh, the Day of [*state the Month and Year*].

(a) Or in case there be a Substitution of Heirs, here insert it at full Length.

(b) In case there be any Real Burdens, Restrictions, or Qualifications of any Kind, either proper to be inserted or referred to, insert them here immediately after the Description of the Lands, &c., or refer to them as above (No. 1.)

(c) If the Lands were held formerly in Ward, say here, "in Free Blench, as in room of Ward." (If the Party prefer

it, he may insert the Tenendas at full Length from the last Crown Charter or Retour.)

General Note to Schedule (C.)—When the Charters Nos. 1, 2, and 3, are to be granted by or on behalf of the Prince and Steward of Scotland, they will be in similar Form, but will run in Name of the “Prince and Steward of Scotland,” without adding his Highness’s other Titles, or will run in Name of Her Majesty, as his Administrator in Law, and the Lands instead of being described as holding of the Crown, will be described as holding of the “Prince and Steward of Scotland,” and the Seal referred to in the Testing Clause will be the Prince’s Seal.

APPENDIX,

No. VI.

FORMS UNDER SERVICE OF HEIRS ACT, 10TH & 11TH VICT., CAP. 47.

1. *Caveat.*

Caveat for A. B. (*Name and Address of the party lodging the Caveat*).

The said A. B. hereby intimates that he intends to oppose any Petition that may be presented to the Sheriff of the County of _____, or to the Sheriff of Chancery, for a General or Special Service to the deceased C. D. (*here Name and Design the Ancestor*) who died on or about the _____ day _____; and had, at the time of his death, his ordinary or principal Domicile in the County of _____ (*or furth of Scotland as the case may be*), and requires to receive notice in terms of the Act 10th and 11th Vict., cap. 47, of the presentment of any such Petition, and that such Notice may be addressed to (*here insert the Party or his Agent as may be wished*).
(*To be signed by Agent, adding his address*).

2. *Petition for a General Service by a Son to his Father.*

Unto the Honourable the Sheriff of (*specify the County, or "Chancery"*), the Petition of A. B. (*here Name and Design the Petitioner*),

Humbly Sheweth,
That the late C. D. (*here Name and Design the Ancestor to whom Service is sought*), died on or about the _____ day of _____,

and had, at the time of his death, his ordinary or principal Domicile in the County of (or furth of Scotland as the case may be).

That the Petitioner is the Eldest Son and nearest lawful Heir in General of the said *C. D.*

May it therefore please your Lordship to serve the Petitioner nearest and lawful Heir in general to the said *C. D.*

According to Justice, &c.

(Signed by the Petitioner or his Mandatory).

3. *Petition for a Special Service by a Son to his Father.*

Unto the Honourable the Sheriff of (*Specify the County, or "Chancery,"*) the Petition of A. B. (*here Name and Design the Petitioner*),

Humbly Sheweth,

That the late *C. D.* (*here Name and Design the Ancestor*), died on or about the day of , last vest and seised in (*here describe the Lands with reference to which the Service is sought*), conform to Charter (*or Disposition, or Precept of Clare constat, or whatever else was the Deed on which the Ancestor's Infefment proceeded, here specify it*), dated the day of , and to Instrument of Sasine following thereon, recorded in the Register of Sasines at the day of .

That the Petitioner is the Eldest Son and nearest lawful Heir in Special of the said *C. D.*, in the Lands and others foresaid.

May it therefore please your Lordship to serve the Petitioner nearest and lawful Heir in Special of the said deceased *C. D.*, in the Lands and others above described.

According to Justice, &c.

(Signed by the Petitioner or his Mandatory.)

The Schedules annexed to the Act are referred to for directions in other and Special Cases.

APPENDIX,

No. VII.

FORMS OF WRITS AND INSTRUMENTS UNDER TRANS- FERENCE OF LANDS ACT, 10TH AND 11TH VICT., CAP. 48.

1. *Original Feu Charter.*

Know all men by these presents, that I, *A. B. (Name and Designation of Granter)*, heritable proprietor of the lands and others after disposed, in consideration of the feu duty and other prestations after written, have sold, alienated, and in feu farm disposed, as I hereby sell, alienate, and in feu farm dispoise, from me, my heirs and successors, to and in favour of *C. D. (Name and Designation of Grantee)*, his heirs and assignees whomsoever, heritably and irredeemably, All and whole (*here insert the description of the Subjects conveyed*), together with the teinds, both parsonage and vicarage thereof, and parts, pendicles, and pertinents of the same ; with entry at the term of To be holden, and to hold, all and sundry the lands, teinds, and others above disposed, by the said *C. D.* and his foresaids, of and under me, my heirs and successors whomsoever, as their immediate lawful superiors of the same, in feu-farm, fee, and heritage, for ever, by all the righteous meiths and marches thereof, as the same lie in length and breadth, with houses, biggings, &c., freely, quietly, well, and in peace, without any revocation or obstacle whatever : Giving therefor, yearly, the said *C. D.* and his foresaids, for the lands and others above disposed to me and my foresaids, immediate lawful superiors of the same, the sum of L. sterling, in name of feu-duty, at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the term of next, for the half

year preceding, and so forth thereafter, at the said two terms in the year, in all time coming; doubling the said feu-duty the first year of the entry of each heir, or singular successor to the lands and others above disposed; and these for all other burden, exaction, demand, or secular service whatever, which can be anyways exacted for the lands and others foresaid, or any part or portion thereof, in all time coming. And I assign the writs, to the effect of maintaining and defending the said *C. D.* and his foresaids in the right of the subjects above disposed; and I oblige myself and my foresaids to make the same furthcoming to the said *C. D.* and his foresaids, whenever they have occasion for the same, upon their receipt and obligation for redelivery within a reasonable time, and under a suitable penalty. And I assign the rents; and I bind myself to free and relieve the said *C. D.* and his foresaids of all public burdens; and I grant warrandice; and I consent to registration hereof, for preservation. Moreover, I hereby desire any Notary Public to whom these presents may be presented, to give to the said *C. D.*, or his foresaids, sasine of the lands and others above disposed. In witness whereof, &c. (*Here insert a Testing Clause in usual form.*)

2. Feu Disposition.

The Inductive and Dispositive Clauses may be in the form given in the preceding example, and the Deed may proceed thus: With entry at the term of (*here specify the Date of Entry*); and I oblige myself to infest the said *C. D.* to be holden *de me*, for payment to us of the sum of L. sterling, in name of feu duty, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the term of , for the half year preceding, and so forth thereafter, at the said two terms in the year, in all time coming; doubling the said feu duty the first year of the entry of each heir, or singular successor, to the lands and others above disposed; and these for all other burden, exaction, demand, or secular service whatever, which can be anyways exacted for the lands and others foresaid, or any part or portion thereof, in all time coming. And I assign the Writs, to the effect of maintaining and defending the said *C. D.* and his foresaids, in the right of the subjects above disposed; and I oblige myself and my foresaids to make the same forthcoming to the said *C. D.*, and his foresaids, whenever they have occasion for the same, upon their receipt and obligation for redelivery within a reasonable time, and under a suitable penalty. And I assign the rents; and I bind myself to free and relieve the said *C. D.* and his foresaids,

of all public burdens ; and I grant warrandice ; and I consent to registration hereof, for preservation and execution. Moreover, I desire any Notary Public to whom these presents may be presented, to give to the said *C. D.*, or his foresaids, sasine of the lands and others above disposed. In witness whereof, &c.

3. *Disposition by a Person Infert.*

I, *A. B.* (*Name and Designation of Granter*), heritable proprietor of the lands and others after disposed, in consideration of the sum of (*insert Sum*) instantly paid to me by *C. D.* (*Name and Designation of Donee*), as the price and value of the said lands and others, of which I hereby acknowledge the receipt, and discharge the said *C. D.* and his heirs and successors, for ever, have sold and disposed, as I hereby sell, alienate, and dispose, from me, my heirs and successors, to and in favour of the said *C. D.*, his heirs and assignees whomsoever, heritably and irredeemably, All and whole (*here describe the Lands conveyed*) ; together with all right, title, and interest, which I, my predecessors and authors, heirs and successors, had, have, or may have, claim, or pretend thereto, in all time coming. With entry at the term of (*here specify the Date of Entry*) ; and I oblige myself to infert the said *C. D.*, and his foresaids, to be holden *a me vel de me* ; and I resign the lands and others, for new infertment ; and I assign the writs, and have delivered the same according to Inventory ; and I assign the rents ; and I bind myself to free and relieve the said *C. D.* and his foresaids of all feu duties, casualties, and public burdens ; and I grant warrandice ; and I consent to registration hereof, for preservation and execution. Moreover, I desire any Notary Public to whom these presents may be presented, to give to the said *C. D.* or his foresaids sasine of the lands and others above disposed. In witness whereof, &c.

NOTE.—For the forms of referring to the Conditions of an Entail, or to real burdens, in subsequent conveyances, see Schedules B. and C. annexed to the Act.

4. *Disposition by a Person having right to an unexecuted Procuratory of Resignation and Precept of Sasine.*

I, *A. B.*, proprietor of the lands and others after disposed, in consideration, &c. (*the remainder of the Inductive Clause, and the Dispositive Clause, may be as in the preceding example*) ; with entry at the

term of (*here specify the Term of Entry*); and I oblige myself to infest the said *C. D.* and his foresaids, to be holden *a me vel de me*, and for that purpose I hereby bind and oblige myself, and my foresaids, to make, subscribe, and deliver, to the said *C. D.* and his foresaids, all Writs and Deeds that may be requisite and necessary; and I assign the Writs, and have delivered the same according to Inventory; and I assign the Rents; and I bind myself to free and relieve the said *C. D.* of all feu duties, casualties, and public burdens; and I grant warrandice; and I consent to registration hereof, for preservation and execution. In witness whereof, &c.

5. *Disposition by an Apparent Heir who has not completed his Title.*

I, *A. B.*, eldest lawful son and heir apparent of the deceased *C. D.*, my father, Heritable Proprietor of the lands and others after disposed, in consideration, &c, (*the remainder of the Inductive Clause, and the Dispositive Clause, may be expressed as in the example No. 3*); with entry at the term of (*here specify the Date of Entry*). In which lands I bind and oblige me to procure myself, upon my own expenses, duly and lawfully served and decerned heir to my said father, in terms of the Act 10th and 11th Vict., cap. 47, intituled "An Act to amend the law and practice in Scotland as to the Service of Heirs," or to obtain a Precept of *clare constat* in my favour from the Superior, and infest and seised in due and competent form: And being thus invested I oblige myself to infest the said *E. F.* and his foresaids, to be holden *a me vel de me*: And for obtaining me infest in the said lands, I hereby make and constitute _____, jointly and severally, my procurators, to purchase, procure, and obtain me infest and seised, as heir aforesaid, in the said lands, by Decree of Service duly recorded and extracted in terms of the foresaid Statute, Precept of *clare constat*, or otherwise: And, as if I were already infest in the said lands, and then as now and now as then, I resign the said lands and others for new infestment: And I assign the writs, and have delivered the same according to inventory; And I assign the rents; And I bind myself to free and relieve the said *E. F.*, and his foresaids of all feu duties, casualties, and public burdens; And I grant warrandice; And I consent to registration hereof, for preservation and execution; Moreover, as if I were already infest and seised in the said lands, and then as now and now as then, I desire any notary public to whom these presents may be presented, to give to the said *E. F.*, or his foresaids, sasine of the lands and others above disposed. In witness whereof, &c.

6. *Disposition by Trustees.*

In this case the clause of warrandice may be qualified thus :—" And we, as trustees foresaid, grant warrandice from fact and deed only, and assign the clauses of absolute warrandice contained in the rights in our favour."

7. *Disposition of a Superiority.*

As the statutory Clause of Warrandice is declared to imply absolute warrandice as regards the lands, the following exception will require to be added : " Excepting always from this warrandice the feu rights, or infestments of property, granted by me, my predecessors, and authors, to the different feuars and vassals, or purchasers thereof, without prejudice to the said (*Disposnee of the Superiority*) and his foresaids to quarrel or impugn the same upon any ground in law not inferring warrandice against me and my foresaids."

According to the approved form of a Disposition of a Superiority, the obligation to infest should be *a me* only, and there should be no Precept of Sasine, but a Procuratory of Resignation.

8. *Disposition by a Vassal to his Superior, with the view of Consolidating the Property and Superiority.*

Be it known to all men by these presents, that I, *A. B.*, in consideration of (*insert sum*), instantly paid to me by *C. D.*, of which I grant the receipt, and discharge him, his heirs, and successors of the same for ever, have sold and disponed, as I hereby sell, alienate, and dispoise from me, my heirs and successors, to and in favour of the said *C. D.*, his heirs and assignees whomsoever, heritably and irredeemably all and whole (*here describe the lands*), together with all right, title, and interest, claim of right, property, and possession, petitory or possessory, which I or my predecessors and authors had, have, or anyways may have, claim, or pretend to the lands and others above disponed, or any part or portion thereof in time coming. Which lands and others above disponed are holden by me, the said *A. B.*, of the said *C. D.*, as my immediate lawful superior thereof, in feu farm, for payment of the feu duties and

others specified and contained in the rights and infeftments thereof: And I hereby resign the said lands and others for new infeftment. And I assign the writs, and have delivered the same according to inventory; and I assign the rents; and I bind myself to free and relieve the said *C. D.* and his foresaids of all feu duties, casualties, and public burdens; and I grant warrandice; and I consent to registration hereof for preservation and execution. In witness whereof, &c.

9. *Bill for Letters of Horning by a Disponee against his Superior, in order to obtain a Charter of Confirmation.*

My Lords of Council and Session, Unto your Lordships humbly shews your Servitor, *A. B.*, That *C. D.*, by his Disposition, dated the _____, for the causes therein specified, sold, alienated, and disposed, to and in favour of the Complainer, his Heirs and Assignees whomsoever, heritably and irredeemably, all and whole (*here describe the lands contained in the Disposition*). In which lands and others the said *C. D.* obliged himself to infeft the Complainer, to be holden *a me vel de me*; as the said Disposition, containing Precept of Sasine and sundry other clauses, in itself more fully bears. In virtue of which Disposition, the Complainer was duly infeft in the said lands and others, conform to Instrument of Sasine in his favour, under the hand of _____ Notary Public, registered in the (*here specify the Register of Sasines in which the Sasine is registered*), on the (*here specify date of Registration*), as the said Instrument of Sasine in itself bears; and as the said Disposition and Instrument of Sasine, here to shew, will testify. That by the sixth section of an Act of Parliament holden in the tenth and eleventh years of the reign of Her Majesty Queen Victoria, chapter forty-eight, intituled, "An Act to facilitate the Transference of Lands and other Heritages in Scotland not held in Burgage Tenure," it is enacted, that, where any person shall be infeft in lands or heritages in Scotland, holden of a subject superior upon a Disposition or other Deed of Conveyance, granted by the person last entered and infeft, or granted by a person whose own title to such lands and heritages is capable of being made public by confirmation, according to the existing law and practice, which Disposition shall contain an obligation to infeft *a me* or *a me vel de me*, or upon a Decree of special Service, or upon a Decree of Adjudication or of Sale, containing a Warrant of Infeftment in terms of said Act, it shall be lawful and competent for such persons, upon production to the Lord Ordinary on the

Bills in the Court of Session, of his Sasine in said lands, and Warrants of the same, and upon shewing the terms and conditions under which the said lands are holden of the superior thereof, to obtain Warrant for Letters of Horning to charge the superior to grant in favour of such party a Charter of Confirmation, in the same way and form as is provided and in use for compelling entry by Resignation.

And that *E. F.* is superior of the said lands and others above described, and that the said *C. D.* is the person last entered and infeft therein, holding immediately of and under the said *E. F.*, for payment of the sum of L. sterling of feu duty annually, payable at two terms in the year, Whitsunday and Martinmas, by equal portions; doubling the same upon the entry of each Heir and singular Successor, as a Precept of *clare constat* granted by the said *E. F.* to the said *C. D.* dated (*insert date*), here to shew, will testify; which duty and casualty of superiority, the Complainer tenders to pay to the said *E. F.*, in terms of the foresaid Statute.

Herefore the Complainer beseeches your Lordships for Letters of Horning at his instance, against the said *E. F.* in the premises, in terms of the foresaid Statute. According to justice, &c.

W. A's. Bill.

(Date.) *Fiat ut petitur*, because the Lords have seen the Disposition, Sasine, and Precept of *clare constat* within mentioned.

M. R.

10. *Letters of Horning on the foregoing Bill, at the instance of a Disponee against a Superior.*

VICTORIA, &c.—Whereas it is humbly meant and shewn to us by our lovite, *A. B.*, That *C. D.*, by his Disposition, dated the , for the causes therein specified, sold, alienated, and disposed, to and in favour of the Complainer, his Heirs and Assignees whomsoever, heritably and irredeemably, all and whole (*here describe the lands contained in the Disposition*). In which lands and others the said *C. D.* obliged himself to infeft the Complainer, to be holden *a me vel de me*; as the said Disposition, containing Precept of Sasine and sundry other clauses, in itself more fully bears. In virtue of which Disposition, the Complainer was duly infeft in the said lands and others, conform to Instrument of Sasine in his favour, under the hand of

annually, payable at two terms in the year, Whitsunday and Martinmas, by equal portions ; doubling the same upon the entry of each Heir and singular Successor ; as a Precept of *clare constat* granted by the said *E. F.* to the said *C. D.*, dated

shewn to the Lords of our Council and Session has testified; which duty and casualty of superiority the Complainer tendered to pay to the said *E. F.*, in terms of the foressaid Statute.—Our Will is herefore, and we charge you that, on sight hereof, ye pass, and in our name and authority lawfully command and charge the said *E. F.*, personally, or at his dwelling place, to enter, infest, and seise the said Complainer in all and whole the lands and others contained in the Disposition above mentioned, and lying and described as aforesaid; and for that purpose to grant a Charter of Confirmation in favour of the Complainer in

terms of the former investiture,—the Complainer always paying to the said *E. F.* the duties or casualties he is by law entitled to receive upon the entry of the Complainer; and that within fifteen days next after the said *E. F.* is charged by you thereto, under the pain of rebellion, and putting him to the horn, wherein if he fail, the said space being elapsed, that immediately thereafter ye denounce him our rebel, put him to the horn, and use the whole other order against him prescribed by law. According to justice, because the Lords have seen the Disposition, Sasine, and Precept of *clare constat* above mentioned, as ye will answer to us thereupon. Which to do we commit to you, and each of you, full power by these our letters, delivering them by you duly executed and indorsed again to the bearer. Given under our Signet at Edinburgh, the day of in the year of our reign 18 .

Ex deliberatione Dominorum Concilii.

11. Charter of Confirmation by a Subject Superior of a Feu-holding, subject to real burdens.

I, *A. B.*, immediate lawful Superior of the lands and others after mentioned, do hereby confirm for ever, to and in favour of *C. D.*, his Heirs and Assignees whomsoever, heritably and irredeemably, all and whole (*here describe the lands contained in the feu-right*); but always with and under the burdens, conditions, provisions, restrictions, limitations, and obligations specified in an Instrument of Sasine in the said lands and others, in favour of *E. F.*, registered in the (*here specify the Register in which the Sasine is registered*), on the (*here specify the date of registration*); and I also do hereby confirm to the said *C. D.* and his foresaids, an Instrument of Sasine in the said lands and others in his favour, registered in the (*here specify the Register of Sasines in which the Sasine is registered*), on the (*specify date of registration*), or of whatever other date or tenor the said Instrument of Sasine in favour of the said *C. D.* may be. To be holden, the said lands and others, immediately of me and my successors, Superiors thereof, in feu-farm, fee, and heritage for ever: Paying therefor yearly the sum of (*insert sum*) of feu-duty, at two terms in the year, Whitsunday and Martinmas, by equal portions; and doubling the said feu-duty the first year of the entry of each Heir or singular successor in the foresaid lands; and these for all other burdens, exactions, demands, or secular

services, which can anywise be exacted or required furth of the same. And I consent to the registration hereof. In witness whereof, &c.

12. *Petition to Lord Ordinary on the Bills, by a Disponee of a Vassal last publicly infeft in lands of which the annual reddendo does not exceed five pounds, against the person having right to the immediate superiority, but who has not completed his feudal title thereto; in order to have the superiority found permanently forfeited, and to obtain entry by Charter of Confirmation from the mediate Superior.*

Unto the Honourable the Lord Ordinary on the Bills, the Petition of *A. B.* humbly sheweth, That *C. D.*, now deceased, as immediate Superior of the lands and others after mentioned, on the _____ day of _____ granted a Precept of Sasine, commonly called a Precept of *clare constat*, for infefting *E. F.*, also now deceased, as eldest son and nearest and lawful Heir of his father, in all and whole (*here describe the lands*), to be holden by the said *E. F.*, of and under the said *C. D.*, in feu-farm, fee, and heritage, for payment of the feu-duty and casualties, not exceeding five pounds sterling in value or amount, mentioned in the said Precept of *clare constat*, on which the said *E. F.* was duly infeft, conform to Instrument of Sasine in his favour, registered in the (*here specify the Register of Sasines in which the Sasine is registered*), on the (*specify date of registration*), and the lands were thus held by the said *E. F.* of and under the said *C. D.*, as his immediate lawful Superior. That by Disposition dated the _____ granted by *E. F.*, he disposed to the Petitioner, his Heirs and Assignees whomsoever, the lands and others above described, and the said *E. F.* thereby obliged himself to infeft the Petitioner and his foresaids, to be held *a me vel de me* as therein mentioned, in virtue of which Disposition and Precept of Sasine therein contained, the Petitioner was duly infeft in the said lands and others, conform to Instrument of Sasine in his favour, registered in the (*here specify the Register in which the Sasine is registered*), on the (*specify date of registration.*) That *G. H.* is the eldest son (*or whatever other relation he is*) and apparent Heir of the said *C. D.*, and as such has right to the superiority of the said lands and others, but he has not made up a feudal title thereto, and is therefore not in a situation to grant entry to the Petitioner, although demanded from him; and the Petitioner now applies to your Lordship for redress, in terms of the Act 10th and 11th Vict., cap. 48, intituled, "An Act to facilitate the Transference of Lands and other Heritages

in Scotland not held in Burgage Tenure," and produces the above mentioned Precept of *clare constat*, and Instrument of Sasine thereon, in favour of the said *E. F.*, and the above mentioned Disposition by the said *E. F.* to the Petitioner, and Instrument of Sasine thereon.

May it therefore please your Lordship, in terms of the said Act, to grant Warrant for serving this Petition on the said *G. H.*, personally, or at his dwelling-place, if within Scotland, or if furth thereof, at the Office of the Keeper of the Records of Edictal Citations at Edinburgh, and to ordain him within thirty days after the date of such service, if within Scotland, other than Orkney or Shetland, and within sixty days if he be furth of Scotland or in Orkney or Shetland, to procure himself entered and infeft in the said lands and others, and to enter the Petitioner in the same, on payment of the duties and casualties exigible on such entry, or else to shew cause for delaying or refusing to do so, with certification that if he fail he shall forfeit and amit all right to the said superiority; and in the event of the said *G. H.* failing so to complete his title and grant entry to the Petitioner, or to shew reasonable cause why he delays or refuses so to do, to find and declare tha tthe said *G. H.* has forfeited and amitted all right to the said superiority, and that the Petitioner and his Heirs and Successors are entitled to hold the said lands and others in all time coming, as Vassals immediately of and under the next Over-Superior, by the tenure and for the reddendo by and for which the forfeited superiority was held. According to justice, &c.

Note.—The form given in the Schedule (E.) No. 1, will serve as an example for a Petition in the case of entry by Charter of Resignation being required.

13. *Petition to Lord Ordinary on the Bills, by a person served and decerned Heir in special to a Vassal last publicly infeft in lands of which the annual reddendo either exceeds five pounds or not, against the person having right to the immediate superiority, but who has not completed his feudal title thereto; in order to have the superiority found temporarily forfeited, and to obtain entry by Charter of Resignation from the Crown or Prince of Scotland, or from the mediate Over-Superior, as in vice of the immediate Superior.*

Unto the Honourable the Lord Ordinary on the Bills, the Petition of *A. B.* humbly sheweth, That the Petitioner, on the day

of _____, obtained a Decree of the Sheriff of the county of _____ (or of the Sheriff of Chancery, as the case may be), serving the Petitioner as eldest lawful son and nearest and lawful Heir in special of the deceased *C. D.*, his father, in all and whole (*here describe the lands, to which the Petitioner has been served Heir*), as an Extract Decree of Service, duly retoured to Chancery in terms of the Act 10th and 11th Vict., cap. 47, intituled, "An Act to amend the Law and Practice in Scotland as to the Service of Heirs," bears.

That the Petitioner's Ancestor, the said *C. D.*, held the said lands and others of and under the late *E. F.*, as his immediate lawful Superior. That *G. H.* is the eldest son (*or whatever other relation he is*) and apparent Heir to the said *E. F.*, and as such has right to the superiority of the said lands and others, but he has not made up a feudal title thereto, and is therefore not in a situation to grant entry to the Petitioner, although demanded from him. The Petitioner now applies to your Lordship for redress, in terms of the Act 10th and 11th Vict., cap. 48, intituled, "An Act to facilitate the Transference of Lands and other Heritages in Scotland, not held in Burgage Tenure," and produces the above mentioned Extract Decree of Service in his favour.

May it therefore please your Lordship, in terms of the said Act, to grant Warrant for serving this Petition on the said *G. H.*, personally, or at his dwelling-place, if within Scotland, or if furth thereof, at the Office of the Keeper of the Records of Edictal Citations at Edinburgh, and to ordain him, within thirty days after the date of such service if within Scotland, other than Orkney or Shetland, and within sixty days if he be furth of Scotland or in Orkney or Shetland, to procure himself entered and infest in the said lands and others, and to enter the Petitioner in the same, on payment of the duties and casualties exigible on such entry, or else to shew cause for delaying or refusing so to do, with certification that if he fail he shall forfeit and amit all right to the duties and casualties payable on the entry to the Petitioner, and that the Petitioner shall be entitled to retain from him and his Successors, as immediate Superiors, the yearly feu-duties and whole other prestations, until fully paid and indemnified for all the expenses of this Petition and procedure to follow hereon, and for all the expenses of completing the Petitioner's title in terms of the said Act; and thereafter, on resuming consideration of this Petition, with or without Answers, to find and declare that the said *G. H.* has forfeited and amit all right to the dues and casualties payable on the entry of the Petitioner, and that the Petitioner is entitled to retain from him and his Successors, as immediate Superiors, the yearly feu-duties and

whole other prestations, until fully paid and indemnified for all the expenses of this Petition and of the procedure to follow hereon, and for all the expenses of completing the Petitioner's title in terms of the said Act; and also to grant Warrant to the Petitioner to apply for and obtain an entry in the said lands and others from the Crown or Prince of Scotland (or *I. K.*, the mediate Over-Superior), as acting in the vice of the said *G. H.*, and to authorise Decree to the above effect to be extracted *ad interim*; and thereafter, upon the completion of the Petitioner's title by an entry from the Crown or Prince of Scotland (or such mediate Over-Superior) as aforesaid, to remit the accounts of the expenses of this Petition and procedure hereon, and of the expenses of completing the Petitioner's title, to the Auditor, to tax the same and to report, and to modify the amount of the said expenses, and to decern for retention of the amount thereof, as aforesaid, (*if the parties have agreed to or are in treaty for a relinquishment, add, "or in the event of the said G. H. relinquishing the superiority, to find, decern, and declare the same to be extinguished, in manner and to the effect expressed in the Statute,"*) or to do otherwise in the premises as to your Lordship shall seem just. According to justice, &c.

Note.—Reference is made to the Schedule (F.) No. 1, for the Forms in other cases.

14. *Letters of Horning at the instance of the Petitioner, in the preceding form, against the mediate over-superior, for an Entry.*

VICTORIA, &c.—Whereas it is humbly meant and shewn to us by our lovite A. B., eldest lawful son and nearest and lawful heir in special of the deceased C. D., his father : That on the day of he obtained interim decree at his instance, in an application to the Lord Ordinary officiating on the Bills in the Court of Session, against G. H., eldest son (*or whatever other relation he is*) and apparent heir of the deceased E. F., the immediate lawful superior of the lands and others under written, finding and declaring that he had forfeited and amitted all right to the duties and casualties, payable on the entry of the Complainer, in All and whole (*here describe the lands as in the original Petition*) ; and that the Complainer is entitled to retain from the said G. H. and his successors, as immediate superiors, the yearly feu duties and whole other prestations, until fully paid

and indemnified for all the expenses of the said Petition, and procedure thereon, and for all the expenses of completing the Complainer's title; and that the said Sheriff granted warrant to the Complainer to apply for and obtain an entry in the lands and others described in the Petition from *I. K.*, the mediate over-superior, as acting in vice of the said *G. H.*, and decerned and allowed decree to go out and be extracted *ad interim*, as the said Decree in itself more fully bears. That by the 9th Section of the Act, made in the 10th and 11th years of our reign, cap. 48, intituled "An Act to facilitate the Transference of Lands and other Heritages in Scotland, not held in Burgage Tenure," it is enacted, that an Extract of such decree shall be a sufficient warrant for Letters of Horning to charge the mediate over-superior to enter the Complainer, by granting a valid Charter or Precept, as in vice of the immediate superior. Our Will is herefore, and we charge you that, on sight hereof, ye pass, and, in our name and authority, lawfully command and charge the said *I. K.* personally, or at his dwelling place, to enter the Complainer in the lands and others particularly before described, to be holden of the said *I. K.*, as acting in the vice of the said *G. H.*; and for that purpose to make, grant, subscribe, and deliver to the Complainer and his foresaids, a valid Charter or Precept for infefting them therein, after the form and tenor of the said Extract Decree, in all points, and that within fifteen days next after the said *I. K.* is charged by you thereto, under the pain of rebellion and putting him to the horn, wherein if he fail, the said space being elapsed, that immediately thereafter ye denounce him our rebel, and put him to the horn, and use the whole other order against him prescribed by law. According to justice, as ye will answer to us thereupon. Which to do we commit to you, and each of you, full power, by these our Letters, delivering them by you duly executed and indorsed again to the bearer. Given under our Signet at Edinburgh the

day of in the year of our reign 18 .

Per Decretum Dominorum Concilii.

15. The Form of a Charter of Confirmation, a Charter of Resignation, and of a Precept of *Clare constat*, proceeding on a Decree of permanent forfeiture, or of relinquishment, will be found in Schedule (I.) annexed to the Act. It contains no provision for compelling the Superior to grant such Charter or Precept.

16. The Forms of a Charter of Confirmation, and of a Charter of Resignation by the Crown, or mediate Superior, as in vice of the immediate Superior unentered, proceeding on a Decree of temporary for-

feiture, are given in Schedule (H.) annexed to the Act. The mediate Superior may be compelled to grant such Charter by Letters of Homing on the Decreet of temporary forfeiture.

17. Summons of General Adjudication authorised by § 18 of Act, which need not, by § 17, be preceded by a Bill.

VICTORIA, &c.—Whereas it is humbly meant and shewn to us by our lovite *A. B.*, Pursuer: That *C. D.*, Defender, by his Bond, dated the _____ day of _____ for the causes therein specified, bound and obliged himself, his heirs and successors whomsoever, to content and pay to the Pursuer, his heirs, executors, or assignees, the sum of One Thousand Pounds sterling, and that at the term of Whitsunday then next, with the sum of Two Hundred Pounds sterling of liquidate penalty in case of failure, and the legal interest of the said principal sum from the date of the said bond to the said term of payment, and yearly, termly, and proportionally thereafter during the non-payment thereof, at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at Whitsunday next, for the interest due at and preceding that date, and the next term's payment at Martinmas following, for the half year preceding; and so forth half yearly, termly, and proportionally thereafter in all time coming, during the non-payment of the said principal sum. That the said principal sum, interest from the date of the said bond, and liquidate penalty, are still resting unpaid. And although the Pursuer has often desired and required the Defender to make payment thereof, yet the Pursuer can neither obtain payment thereof nor security for the same. Therefore, it is necessary, in terms of the Act of Parliament 1672, cap. 19, intituled "Act anent Adjudications," and the Act passed in the 10th and 11th years of our reign, cap. 48, intituled "An Act to facilitate the Transference of Land and other Heritages in Scotland, not held in Burgage Tenure," that all and whole the lands, rights, and others after described, pertaining heritably or otherwise to the Defender, his predecessors, or authors, viz. All and whole (*here describe the subjects*), with the teinds, parsonage and vicarage thereof, and all right, title, and interest, claim of right, property, and possession, petitory or possessory, which the defender, his authors or predecessors, heirs or successors, had, have, or can pretend thereto, or to any part or portion thereof; together with all and sundry charters, dispositions, assignations, conveyances, procuratories, and instruments of resignation, precepts, and instruments of sasine, special and general services, adjudications, decrees of sale, tacks, and

rights of teinds, decrees of plat, prorogation and valuation thereof, and all other writs, evidents, rights, titles, and securities, of and concerning the said lands, rights, and others, with all reversions of the same, legal or conventional, Ought and Should be Adjudged from the Defender, and all others having, or pretending to have, right thereto, and Decerned and Declared, by decree of the said Lords, to pertain and belong to the Pursuer and his foresaids, heritably, for payment and satisfaction to them of the foresaid principal sum of One Thousand Pounds sterling, interest thereof from the date of the said bond to the date of the decree to follow hereon, with the said sum of Two Hundred Pounds sterling of liquidate penalty, incurred through failure, all contained in the bond above narrated, according as the same shall amount, when accumulated, at the date of the decree of adjudication to follow hereon, and of the interest of the said accumulated sum, during the not-redemption of the said lands, rights, and others, besides the composition to the superiors, and expenses of the infestment to follow on the said decree of adjudication, with the interest of the said composition and expenses, from the time of disbursing the same, during the not-redemption. And it Ought and Should be Ordained that the Pursuer and his foresaids be infest and seised in the lands, rights, and others foresaid, so to be adjudged, to be held by them of the immediate lawful superiors of the same, in the same manner, and as freely, in all respects, as the Defender, his predecessors or authors, held, hold, or might have held the same; and for that purpose it Ought and Should be Ordained that letters of Horning be directed against superiors, charging them thereto; after the form and tenor of the foresaid Acts of Parliament, laws and practice of Scotland, used and observed in the like cases, as is alleged. —Our will is herefore, &c.

APPENDIX,

No. VIII.

FORMS UNDER BURGAGE TENURE ACT.

1. *Disposition by a person Infest.*

Know all men by these presents, that I, *A. B.*, heritable proprietor of the subjects after disposed, in consideration of the sum of £.

advanced and paid to me by *C. D.*, as the agreed price of the same, whereof I hereby grant the receipt, and discharge the said *C. D.* for ever, have sold and disposed, as I hereby sell, alienate, and dispose, from me, my heirs and successors, to and in favour of the said *C. D.*, his heirs and assignees whomsoever, heritably and irredeemably, All and whole (*here describe the lands*), together with all right, title, interest, claim of right, property, and possession, petitory or possessory, which I, my predecessors or authors, had, have, or any way may have, claim, or pretend thereto, in time coming; with entry at the term of (*here specify the date of Entry*). And I oblige myself to infest the said *C. D.* and his foresaids, to be holden of her Majesty in free burgage. And I hereby resign the said lands and others in favour of the said *C. D.* and his foresaids for new infestment. And I bind myself to free and relieve the said *C. D.* of all cess, annuity, ground annual, and other public and parochial burdens. And I assign the rents of the said lands. And I also assign the writs and evidents, and have delivered the same according to inventory. And I grant warrandice as accords. And I consent to the registration hereof for preservation and execution. In witness whereof, &c.

At there was by (or on behalf of) C. D. presented to me, Notary Public and Town Clerk of the said Burgh subscribing, a disposition granted by A. B., and bearing date the day of , by which disposition the said A. B. sold, alienated, and disposed, to the said C. D., his heirs and assignees whomsoever, heritably and irredeemably, All and whole (*here describe the lands*) ; which disposition contains an obligation to infeft the said C. D., to be holden of her Majesty in free burgage, and also contains procuratory to make resignation of the said lands and others in favour of the said disponsee and his foresaids, for new infeftment. In virtue of which procuratory, the said lands and others were resigned ; and in terms of the said disposition, I hereby give sasine to the said C. D. of all and whole the foresaid lands and others. In witness whereof, I have subscribed these presents, written on this and the preceding pages, by E. F., my clerk, before these witnesses, G. H. and I. K. (*Names and Designations of Witnesses.*)

(Motto) *L. M.,*

Notary Public.

NOTE.—The Notary will sign, according to the present practice, each page of the Instrument, and the witnesses will sign on the last page only.

Reference is made to the Schedules annexed to the Act for other and special cases of Dispositions and Instruments of Sasine, and also to the Forms (Appendix No. 7,) under the Transference of Lands Act.

APPENDIX,

No. IX.

FORMS OF BONDS AND DISPOSITIONS IN SECURITY UNDER HERITABLE SECURITIES ACT, 1847.

1. *Form of a Bond and Disposition in Security by a Debtor to a Creditor for money instantly advanced.*

For the form of such a deed, see Schedule annexed to Act.

2. *Form of a Bond and Disposition in Security by two joint Debtors, with a conveyance by one of them to two Creditors jointly, for money formerly advanced.*

We, *A. B. and C. D. (here name and design the Granters)* grant us to have, on the day of , borrowed and received from *E. F. and G. H. (here name and design the Creditors)* the sum of (*insert sum*) sterling, which sum we bind ourselves, conjunctly and severally, and our heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said *E. F. and G. H.* jointly, and to their heirs and assignees whomsoever, at the term of (*here insert the date and place of payment*), with a fifth part more of liquidate penalty in case of failure, and the legal interest of the said principal sum from the day of to the said term of payment, and half-yearly, termly, and proportionally thereafter, during the not-payment of the same, and that at two terms in the year, Candlemas and Lammas, by equal portions, beginning the first

term's payment of the said interest at the term of next to come, for the interest due preceding that date, and the next term's payment thereof at following, and so forth half-yearly, termly, and proportionally thereafter, during the not-payment of the principal sum, with a fifth part more of the interest due at each term of liquidate penalty, in case of failure in the punctual payment thereof. And in security of the personal obligation before written, I, the said *A. B.*, dispose to, and in favour of the said *E. F.* and *G. H.* jointly, and their foresaids, heritably, but redeemably, as after mentioned, yet irredeemably in the event of a sale by virtue hereof, all and whole (*here describe the Lands or other Heritages*), (*a*) and that in real security to the said *E. F.* and *G. H.* jointly, and their foresaids, of the whole sums of money above written, principal, interest, and penalties. And I, the said *A. B.*, assign the rents; and I assign the writs; and I grant warrandice; and I reserve power of redemption; and I oblige myself for the expenses of assigning and discharging this security; and on default in payment, I grant power of sale. And we, the said *A. B.* and *C. D.*, consent to registration for preservation and execution; and I, the said *A. B.*, consent also to registration in the General or Particular (*or burgh as the case may be*) Register of Sasines. In witness whereof, &c.

(*a*) If the lands are held under any conditions, reservations, restrictions, and provisions, say here, "But with and under the conditions, reservations, restrictions, and provisions, specified and contained in an Instrument of Sasine, (or Resignation *ad remanentiam*)," in the said lands and others in favour of *I. K.*, recorded in the (*here mention the Register in which the Instrument is recorded*), upon the day of in the year .

APPENDIX,

No. X.

FORMS UNDER CROWN CHARTERS ACT.

1. *Charter of Confirmation and Precept for Infefting an Heir.*

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, We do hereby confirm for ever, to and in favour of *A. B.*, and his Heirs and Assignees whomsoever, heritably and irredeemably, All and whole (*here insert the Lands or other Heritages to be confirmed*), and the following Deeds and Instruments (*or other Writings*) in so far as they relate to the lands and others hereby confirmed (*here describe the Deeds, Instruments, or other Writings to be specially confirmed*), or of whatever other dates and tenor the said several writs may be. Moreover, whereas by decree of General Service (*or " of Special Service " as the case may be*) of the said *A. B.* dated (*here insert the date of the Decree*), and recorded in Chancery on (*here insert the date of Registration*), and other authentic Instruments and Documents, it clearly appears that *C. D.* (*here insert the name and designation of the Ancestor*) died last vest and seised as of fee in (*here describe the Lands*), and that in virtue of (*here describe the Charter and Sasine, or Precept and Sasine, or other Deeds forming the last Investiture, by dates, and dates of Registration*), and that the said *A. B.* is eldest son and nearest and lawful Heir in general (*or " in special " as the case may be*) of the said *C. D.* in the said lands and others, and that the said lands and others are holden of us and our Royal Successors (*here state the Tenure, Blench, Feu, or other*) for payment (*here state the Reddendo from the last Charter*). Therefore we desire any Notary Public to whom these presents may be presented, to give to the said *A. B.*, as Heir foresaid, sasine of the lands and

others before described. In witness whereof, We have ordered the Seal, now used for the Great Seal of Scotland, to be appended hereto of this date, and the same is accordingly appended at Edinburgh, the day of (*insert date*).

2. *Crown Charter of Confirmation and Resignation.*

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, We do hereby give grant, and dispone, and for ever confirm to *A. B.*, and his Heirs and Assignees whomsoever, heritably and irredeemably, All and whole (*here insert the Lands or other Heritages*), which lands and others above written formerly belonged to *C. D.*, holden by him immediately of the Crown in terms of the confirmation hereinafter contained, and have been resigned by him into our hands by virtue of a Procuratory of Resignation contained in a Disposition of the said lands and others granted by him in favour of the said *A. B.*, dated (*here insert Date*). To be holden, the said lands and others, of the Crown in free blench farm (*or "in feu farm" as the case may be*) for ever, paying therefor a penny Scots yearly of blench duty, if asked only (*or if held in Feu here specify the Feu duty and other services*). And further, we do hereby confirm for ever a Disposition granted by *E. F.* to the said *C. D.*, dated (*insert date*), whereby the said *E. F.* disponed to the said *C. D.*, his Heirs and Assignees whomsoever, heritably and irredeemably, all and whole the lands and others above mentioned, which Disposition contains an Obligation to Infest *a me vel de me*, and a Precept of Sasine, as also an Instrument of Sasine in favour of the said *C. D.* following on the said Disposition, and recorded in the (*here specify the Register in which the Instrument is recorded*) on the (*here specify date of Registration*), or of whatever other dates and tenor the said several writs may be. Moreover, we desire any Notary Public to whom this Charter may be presented, to give to the said *A. B.* or his foresaids, sasine of the lands and others above described. In witness whereof, we have ordered the Seal now used for the Great Seal of Scotland, to be appended hereto of this date, and the same is accordingly appended at Edinburgh the day of . (*State the day, month, and year.*)

Note.—Reference is made to the Schedule annexed to the Petition for other Forms.

APPENDIX,

No. XI.

ACT OF SEDERUNT TO REGULATE PUBLICATION IN SERVICES, AND THE FEES OF SHERIFF CLERKS THEREIN.

EDINBURGH 14th July 1847.

The Lords of Council and Session, in pursuance of the powers vested in them by the Act of Parliament passed in the 10th and 11th years of Her present Majesty's reign, chapter 47, intituled, "An Act to amend the Law and Practice in Scotland as to the Service of Heirs," Declare,—

I. That the Abstracts to be published in regard to General and Special Services, before the Sheriffs of Counties and the Sheriff of Chancery, shall be in the forms, or as nearly as may be in the forms, following, according to the circumstances of the case:—

1. *Abstract of Petition for General Service, when presented to the Sheriff of a County.*

Petition for General Service to the Sheriff of [*here name the County*] by *A. B.* [*here name and design the Petitioner*] as [*here mention the relationship and character, as stated in the Petition*] in general to the deceased *C. D.* [*here name and design the deceased*] whose ordinary or principal domicile, at the period of his death, was in the said County.

Presented on the [*here mention the date of presenting the Petition*].

2. *Abstract of a Petition for Special Service, when presented to the Sheriff of a County.*

Petition for Special Service to the Sheriff [*here name the County*] by *A. B.* [*here name and design the Petitioner*] as [*here mention the re-*

relationship and character, as stated in the Petition] in special to the deceased C. D. [here name and design the deceased] in the lands of [here mention the general designation or leading name, and if there be more parcels than one, the leading names of the lands described in the Petition].

Presented on the [here mention the date of presenting the Petition].

3. *Abstract of a Petition for General Service, when presented to the Sheriff of Chancery.*

Petition for General Service to the Sheriff of Chancery by A. B. [here name and design the Petitioner] as [here mention the relationship and character, as stated in the Petition] in general to the deceased C. D. [here name and design the deceased] whose ordinary or principal domicile, at the period of his death, was in the County of [here name it, or who died domiciled furth of Scotland].

Presented on the [here mention the date of presenting the Petition].

4. *Abstract of a Petition for Special Service, when presented to the Sheriff of Chancery.*

Petition for Special Service to the Sheriff of Chancery by A. B. [here name and design the Petitioner] as [here mention the relationship and character, as stated in the Petition] in special to the deceased C. D. [here name and design the deceased] in the lands of [here mention the general designation or leading name, and if there be more parcels than one, the leading names of the lands described in the Petition] situate in the County of [here name it, or if in more Counties than one, say in the Counties of and].

Presented on the [here mention the date of presenting the Petition].

II. That in making edictal publication of all Services, an Abstract, in the form above prescribed, as suitable to the case, shall be left by the Sheriff-Clerk of Chancery at the office of the Keeper of the Register of Edictal Citations, and shall be entered by him in a separate book, to be kept by him for that purpose, and shall be printed and published weekly in the printed Record of Edictal Citations, which, so far as regards the purposes of this Enactment, shall be a weekly publication.

III. That the Official Notices of Publication shall be required and

given by the several Sheriff-Clerks, whether of Counties or of Chancery, in the following forms, or as nearly as may be in these forms :—

1. *Requisition from the Sheriff-Clerk of a County to the Sheriff-Clerk of Chancery.*

[Place and Date].

SIR,—I request you to publish Edictally the Service, of which an Abstract is subjoined, and to send me immediate notice of your having done so. I am, &c.

[Signature and Designation].

[Here copy the Abstract].

2. *Answer by the Sheriff-Clerk of Chancery to the above.*

Edinburgh, [Date].

SIR,—I have received your Requisition of the [date] which I return enclosed, with a Certificate of Publication annexed to it. I am, &c.

[Signature and Designation].

3. *Certificate of Publication to be so annexed by the Sheriff-Clerk of Chancery.*

Edinburgh, [Date].

I hereby certify that the before-written Abstract was Edictally published by me this day.

[Signature and Designation].

4. *Requisition from the Sheriff-Clerk of Chancery to the Sheriff-Clerk of a County.*

Edinburgh, [Date].

SIR,—I request you to publish in your County the Service of which an Abstract is subjoined, and to send me immediate notice of your having done so. I am, &c.

[Signature and Designation].

[Here copy the Abstract].

5. *Answer by the Sheriff-Clerk of the County to the above.*

[Place and Date].

SIR,—I have received your Requisition of the [date] which I return enclosed, with a Certificate of Publication annexed to it. I am, &c.

[Signature and Designation].

6. *Certificate of Publication to be so annexed by the Sheriff-Clerk of the County.*

[Place and Date].

I hereby certify that the before-written Abstract was duly published in this County by me this day.

[Signature and Designation].

IV. That the Requisition for publication above prescribed shall be made by the Sheriff-Clerk, whether of a County or of Chancery, with whom the Petition for service has been lodged, without delay after his receiving such Petition in a post-paid letter; and the publication shall be made, and the prescribed answer to such requisition shall be returned, likewise in a post-paid letter, without delay.

V. That when a Petition of Service is lodged with the Sheriff-Clerk of any County, he shall receive from the party presenting the same, the fee payable to the Sheriff-Clerk of Chancery for the edictal publication thereof, and shall, once in each year, at a period and in the manner to be appointed under proper authority, make due accounting to the Sheriff-Clerk of Chancery therefor. And when a Petition of Service shall be lodged with the Sheriff-Clerk of Chancery, he shall receive from the party presenting the same, the fee payable to the Sheriff-Clerk of the County in which such service has to be published for such publication thereof, and shall, once in each year, at a period and in the manner to be appointed under proper authority, make due accounting to the Sheriff-Clerk of such County therefor.

VI. And to obviate doubts in regard to the form of Extracts of Decrees of General Service, which, in terms of the 25th section of the said Statute, are limited to certain lands and heritages embraced in a particular specification thereof annexed to the Petition for Service, it is declared that such specification shall be signed by the Sheriff-Clerk, but

it shall not be necessary that the copy thereof to be embodied in such Extracts shall be so signed.

VII. And, until otherwise ordered by Act of Sederunt, the following fees shall be exigible by Sheriff-Clerks for the business done under the foresaid Act of Parliament.

And the Lords appoint this Act of Sederunt to continue in force till the third Sederunt-day of May next, and to be printed and published in the usual form.

D. BOYLE, *I.P.D.*

TABLE OF FEES.

FEES TO BE PAID IN THE OFFICE OF CHANCERY.

For extracting Decrees of Service (including recording), each sheet of said extract, or part of a sheet, of 300 words,	L.0	2	0
For Certified Copies of Proceedings in Services, when required by the party, each sheet, or part of a sheet, of 300 words,	0	2	0
For inspection of each Book of Record, having a corresponding Index of reference,	0	2	6
For inspection of the proceedings in a Service,	0	2	6
For searches in the Indices in the Books of Record,			
(1.) For any period not exceeding 1 year, a Fee of	0	2	6
(2.) For any period from 1 year to 10 years inclusive, a Fee of	0	5	0
(3.) For any longer period,	0	10	0
For transmitting the proceedings in a Service on the Warrant of the Court of Session,	0	7	6
For each attendance to exhibit a Book or Books of Record, where the same may be lawfully required, a fee of	0	5	0

FEES TO BE PAID TO THE SHERIFF-CLERK OF CHANCERY, AND SHERIFF-CLERKS OF COUNTIES.

Fee to be received on presenting the Petition whether of General or Special Service, whereof one-half to be retained by the Sheriff-

Clerk receiving it, and the other half accounted for by him to the Sheriff-Clerk who assists in the publication of the Petition, and to cover correspondence, framing of abstracts, publication, and postages, L.0 10 0

In General Services.

For attending at Service, and framing and recording Minutes,	0 3 6
In litigated Cases, the Clerk or Assistant-Clerk to be paid for writing the proof, at the rate, per sheet of 300 words, of .	0 0 6
For general trouble connected with the Service,	0 10 0
For writing Decree of Service,	0 2 6

In Special Services.

For framing and recording Minutes, (including attendance at the Service)—	
For the first sheet, of 300 words,	L.0 3 6
Every following sheet,	0 2 0
For general trouble connected with the Service,	0 15 0
For writing Decree of Service,	0 5 0
In litigated cases, the Clerk or Assistant Clerk to be paid for writing the Proof, at the rate, per sheet of 300 words, of .	0 0 6

NOTE.—In all cases, the additional procedure occurring when the Service is opposed, to be paid for by the parties according to the rates chargeable by the respective Sheriff-Clerks in ordinary business; and in the case of the Sheriff-Clerk of Chancery, according to the rates chargeable by the Sheriff-Clerk of Edinburgh, as regulated by the Act 1st and 2d Vict., cap. 119.

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